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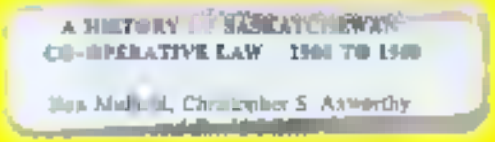

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A HISTORY OF SASKATCHEWAN CO-OPERATIVE LAW 1900 TO 1960

Ben Mallard, Christopher S Axworthy and David Linton

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A HISTORY OF SASKATCHEWAN CO-OPERATIVE LAW 1900 TO 1960

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A HISTORY OF SASKATCHEWAN CO-OPERATIVE LAW 1911 TO 1968

BY DONALD MULLORD, CHRISTOPHER S. AXWORTHY AND DAVID LISTON*

1 INTRODUCTION

This paper traces the history of Co-operative Law in Saskatchewan from the time before Saskatchewan was a province to 1968 in doing so it attempts to give the sense of the discussions among co-operators in Saskatchewan about what the appropriate statutes should permit and to describe the concerns the provincial government had when it considered the enactment of amendments. Studying the case of Saskatchewan co-operative law is instructive because of the pre-eminence outside of Quebec, of Saskatchewan as a "co-operative province" in this century it gradually became influential in setting the course of legislation for other provinces.

The history of Saskatchewan law begins with the English model that was transported to Canada prior to Saskatchewan's provincehood I should be remembered that the U.K. co-operative model was predicated on consumer co-operatives and that adaptations were therefore necessary to accommodate a movement more oriented to producer co-operatives.

2. EARLY ENGLISH STATUTES

When England's first successful co-operative society the Rochdale Equitable Pioneers Society was organized in 1844 there was no suitable legislation by which such a society could incorporate The Joint Stock Companies Act had been passed in 844 enabling joint stock businesses with 25 members or more to be granted incorporation by the Board of Trade without recourse to a special private Act of Parliament, as had previously been the case. However the 1844 Act did not grant limited liability and the procedure required was too expensive for a small co-operative society[1]

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1 Joint Stock Companies Act, [illegible] 8 Vict. c.110

2 G.D.H. Cole, A Century of Co-operation, Allen & Unwin, 1944, at 80

The Rochdale Pioneers applied for enrolment under the Friendly Societies Acts of 1834 and 1846.[3] The Friendly Societies Act had been first passed by Parliament in 1793 to encourage working people to form charitable societies to benefit the sick and infirm, and thus to reduce public expenditure.[4] The preamble to the Act stated:

> Whereas the protection and encouragement of friendly societies in this kingdom, for raising, by voluntary subscriptions of the members thereof, separate funds for the mutual relief of the said members in sickness, old age and infirmity, is likely to be attended with beneficial effects, by promoting the happiness of individuals and at the same time diminishing the public burthens; ...[5]

The Act required that the societies be organised democratically. The members were to amend from time to time to 'constitute such proper and wholesome rules orders and regulations ... for the government of the society.'[6] These rules were to be submitted to the Justices at Quarter Sessions for approval,[7] and once approved, they could only be altered by the consent of three-quarters of the members at a general meeting, where notice of the amendment to the rules had been given at two prior general meetings.[8] The 1793 Act also allowed the society's rules to provide for the resolution of disputes between the society and its members by arbitration.[9] This provision was continued in the later Industrial and Provident Societies Act. The 1793 Act restricted the societies to charitable activities but the Act was amended frequently in the following years, and in 1834 the scope of the Act was broadened to allow Friendly Societies to be organised "for any purpose which is not illegal."[10] This phrase apparently enabled trading societies to be registered under the Act but the general wording created uncertainty as to which activities were permitted. In 1846 as a result of lobbying

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3 Id., at 88.

4 Friendly Societies Act, 33 Geo. 3, c. 54.

5 Id., preamble.

6 Id.

7 Id., s. 8.

8 Id., s. 5.

9 Id., s. 29.

10 Amendment to Friendly Societies Act, 5 & 6 Will. 4, c. 63.

by the Rochdale Pioneers and influential co-operative sympathizers, the Friendly Societies Act was amended to include the following 'frugal investment' clause:

> Be it enacted ... that a society may be established ... for the frugal investment of the savings of the members to enable enabling them to purchase food, fuel, clothes, or other necessaries ... the tools or implements of their trade or calling, or to provide for the education of their children or kindred ... with or without the assistance of charitable donations: Provided always ... that the shares in any such ... frugal society shall not be transferable ... and that the advances of each member shall accumulate or be employed for the sole benefit of the member ...[11]

Though pleased with this amendment, co-operators viewed the restrictions that registration under the Friendly Societies Act imposed on trading societies' activities as unnecessary. For example, the societies could hold personal property only through non-member trustees and they could not own land, reserves could only be invested with the National Debt Commissioners and there was no provision for federation of the societies.[12] Dissatisfied with this legislation, the societies lobbied for further changes to the Act; this led, in 1852, to the first statute specifically drafted to provide for producer and consumer co-operation, The Industrial and Provident Societies Act.[13]

A. The Industrial and Provident Societies Act 1852

The title of the Act, which is still used today, reflects the belief that the working man's trading societies would serve a charitable purpose. The margin note to section 1 reads 'Societies of working men may be established for attaining the objects of Friendly Societies Acts by means of joint trade'.[14] Trading surpluses were to be used for 'such provident purposes ... as shall be from time to time authorised by the laws in force with respect to Friendly Societies'.[15] Societies would continue to be registered by the Registrar of Friendly Societies,[16] and by section 7 of the Act, 'all the provisions of the laws

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[11] Amendment to Friendly Societies Act, 6 & 7 Vict., c. 23

[12] Supra, note 8.

[13] Industrial and Provident Societies Act, 15 & 16 Vict., c. 31

[14] Id., s. 1.

[15] Id., s. 3.

[16] Id., s. 8

relating to Friendly Societies shall apply to every Society to be constituted under that Act.[17]

Section [illegible] of the 1852 Act, adopted into early Canadian co-operative statutes outlines the purposes for which societies could be organized:

> It shall be lawful for any number of persons to establish a society under the provisions of this and the said recited Act, for the purpose of raising by voluntary subscriptions of the members thereof a fund for effecting any purpose or object for the time being authorized by the laws in force with respect to Friendly Societies or by this Act, by carrying on or assisting in carrying any labour, trade or handicraft, or several labours, trades or handicrafts except the working of mines, minerals or quarries beyond the limits of the United Kingdom of Great Britain and Ireland, and also except the business of banking whether in the said United Kingdom or elsewhere.[18]

The section led some true co-operative societies were not limited to retail trading and that worker co-operatives of tradesmen were also contemplated. Like the Friendly Societies, these co-operatives were to raise capital through voluntary subscription and it has been suggested that worker co-operatives were not as successful in England as retail consumer co-operatives because of the difficulty of raising the necessary capital from the workers themselves.[19]

Section 2 of the Act listed matters for which the Rules of the society should provide. Interest on debt was not to exceed 6 per cent, and the value of loans was not to exceed four times the amount of the paid-up subscriptions. Dividends on subscriptions were not to exceed 5 per cent (then prevailing a different interest rate for loan capital than another capital), and no dividends were to be paid out of the society's cap ital. Any surplus was to be used firstly to repay loans still then either for increasing capital for provident purposes under the Friendly Societies Act, or for a patronage refund. The Rules were also to provide for the appointment of managers and other officers, the making of contracts, procedures for withdrawal of members and the

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17 [illegible]

18 [illegible]

19 See generally the criticisms of Sidney and Beatrice Webb, cited in R. Oakeshott, The Case for Worker Co-ops, Routledge & Kegan Paul London, 1978 at pp 41, 2 Thereby Workers' Co-operatives in the 1st Century, Melbourne, London, 1891, at pp 35-38

arbitration of disputes, and the method of dissolution of the society.[30] The Act did not provide a procedure for adopting these rules but it is probable that that was not considered necessary since the Friendly Societies Acts provided for democratic control by the members of a committee of members.

Section 3 ensured that members interest was not transferable.[31] This was an important restriction since it prevented control of the societies from passing into the hands of persons who were not the societies' persons.

Section 5 of the Act limited a member's interest in shares to one hundred pounds.[32] Section 8 ensured that the liability of members was unlimited.[33] This was a significant deterrent to working-class investors, but it could be circumvented to some degree by vesting property absolutely in the hands of trustees.[34] It is not surprising however that limited liability was withheld from the co-operative societies in 1852, since it was not intended to encompass until 1855. In that year Parliament enacted the Joint Stock Companies Act,[35] which for the first time limited the liability of the shareholders to the amount unpaid on their shares.[36] This Act was the mode for company legislation in England and Canada for over a hundred years.

The Industrial and Provident Societies Act was extensively revised in 1862[37] to include several of the provisions made for joint stock companies in the 1855 Act. For example the 1855 Act provided that the minimum number of persons that could form a limited liability company was seven and that the association could be formed "for any lawful purpose".[38] Similarly the 1862 Act required a minimum of seven persons to form a society and stated that societies could be formed for any purpose permitted by law.

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30 supra note 28 s. 9.

31 Id., s.

32 Id., s. 8

33 Id., s. 9

34 Supra, note 3, at 30

35 Joint Stock Companies Act, 18 & 19 Vict. c. 47

36 Id., s. 48

37 25 & 26 Vict. c. 87

38 Supra, note 28, s. 8

except mining, quarrying and banking.[31] Both Acts limited shareholders' liability to the value of their shares[32] but in consideration of that privilege both societies and companies were required to have a registered office to which notices and communications could be addressed,[33] and to paint or affix an easily legible sign on every office or place of business.[34] Stiff penalties for non-compliance were included in both Acts.[35] The 1855 Act prohibited a company from registering under a name identical to that of a subsisting company or so nearly resembling such a name as to be "calculated to deceive".[36] The provision was broadened in the 1862 Act to prohibit names that were likely to deceive".[37] The Friendly Societies Act, previously applicable to co-operative societies in 1846, were made applicable only to exemption from stamp duties and income tax, settlement of disputes by a barrister or justices, compensation of members unjustly excluded the power of the courts in the case of fraud, and the jurisdiction of the Registrar of Friendly Societies.[38] Comprehensive provisions in the 1855 Act for winding up companies were made applicable to societies.[39]

The 1862 Act did not follow the 1855 Joint Stock Companies Act in providing for general and special meetings of shareholders or for a comprehensive schedule of regulations for managing the company. The 1862 Industrial and Provident Societies Act was less prescriptive in its requirements. The Rules of a society were to be registered with the Registrar of Friendly Societies,[40] and were to be available to any person on payment of a sum not exceeding one shilling.[41] The Act included a schedule of matters for which

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31 Supra, note 30 s. 4

32 Supra, note 31 s. 38 supra, note 30 s. 38.

33 Supra, note 30 s. 39; supra, note 27 s. 30

34 Supra, note 30 s. 40 supra, note 30 s. 40

35 Supra, note 31 s. 76 supra, note 27 s. 8

36 Supra, note 30 s. 9

37 Supra, note 30 s. 9

38 Supra, note 30 s. 4

39 Id., s. 16.

40 Id., s. 17

41 Id., s. 6.

42 Id., s. 7

the Rules were to provide. For example, they were to provide for the mode of holding meetings and right of voting, and for making all directing rules. The frequency of meetings was not prescribed, and the principle of one member-one vote was not specifically included. The specific restrictions in the 1852 Act on the interest to be paid on loans or members' subscriptions was dropped in favour of a general statement that the Rules were to provide for "the mode of application of profits". The overall effect of the 1862 Act was to remove some of the restrictions on the societies under the previous Act, and to treat the societies as commercial businesses rather than as special kinds of social or charitable institution.

B The Co-operative Principles of the Rochdale Pioneers

The Rochdale Equitable Pioneers Society evolved a set of principles for co-operative societies. The Pioneers did not commit these principles to a written list, and it is probable that they evolved over a period of years. Consequently different authorities quote different "principles", and in recent years there has been some debate about the actual number of Rochdale Principles. W P Watkins writing in 1959 lists nine principles that he regards as fundamental for co-operative ventures:

1. Democratic control: one member one vote.
2. Limited interest on capital
3. Patronage dividends.
4. Unlimited membership.
5. No credit; business on a cash basis
6. Educational work.
7. Political and religious neutrality
8. Goods and services of high standard.
9. Co-operatives sell goods or provide services at the market price.[40]

It is interesting to note that while the Industrial and Provident Societies Act of 1852 referred to limited interest on capital and patronage dividends, the 1862 Act does not refer specifically to any of the principles. The purpose of the 1862 Act appears to be to regulate the interaction of the society with other businesses and with the government, but to leave internal management of the society and its members. Since most of the co-operative principles are concerned with the co-operatives' internal management they were not incorporated into the legislation of 1862.

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40 W P Watkins Canadian Co-operative Law, Toronto, Cornwall, 1959, at 8

3. EARLY CANADIAN CO-OPERATIVE LAW

A. The First Canadian Co-operative Statute

In 1865, the Ontario legislature passed an Act Respecting Co-operative Associations[41] closely modelled on the Industrial and Provident Societies Act of 1862. The purposes for which an association could be organized were much like those set out in the 1862 Act,[42] as were the conditions under which an association could commence operations. Before it could do so, it was to frame a set of rules for regulating, governing and managing the association. The rules were to provide for the following matters:
a) mode of convening general and special meetings, and of altering rules;
b) provisions for the audit of accounts;
c) power and mode of withdrawal of members and provisions for the claims of executors or administrators of members;
d) mode of application of profits;
e) appointment of managers and other officers, and their respective powers and remuneration, and provisions for filling vacancies occasioned by death, resignation and other causes.[43]

The 1865 Act does not distinguish between general meetings and special meetings, but in 1861 the province of Canada had passed The Joint Stock Companies General Clauses Consolidation Act,[44] which did distinguish between the two. A special meeting was defined as a meeting called by one-fourth part in value of the shareholders of the company "for the transaction of any business specified in the notice of the meeting."[45] Section 5 section) of the Companies Act provided:

> 1. When not otherwise expressly enacted, this Act shall apply to every joint stock company incorporated by any Act hereafter to be passed for any of the following purposes:[46]

It is possible that the drafters of the 1865 Act intended that the definitions used in the Companies Act would be applied to co-operatives.

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41 Co-operative Associations Act, S.O. 1865, c. 33

42 Id., s. 1

43 Id., s. 4.

44 S.C. 1861 c. 18.

45 Id., s. 10.

46 Id., s. 5

The complete title of the 1865 Co-operative Associations Act was An Act to authorise the formation of companies or co-operative associations for the purpose of carrying on in common, any trade or business. The distinction between "company" and "co-operative association" is not explained in the Act. However section 2 of the 1865 Companies Act stated:

> 2. For the purpose of incorporating this Act, or any of its provisions with a special Act, it shall be sufficient in such Act to enact that the clauses of this Act, or such of them or of such Act maybe particularly designed to that end, shall be incorporated with that Act [47]

However the drafters of the Co-operative Associations Act did not specifically incorporate the provisions of The Joint Stock Companies Act, and so it could be argued that the meanings of "general meeting" and "special meeting" in the Act were not incorporated into the 1865 Act.

Another possible interpretation of the words "special meeting" is suggested by section 7 which prescribes the manner of altering the rules.

> 7 After such rules have been certified it shall be lawful for such Association by resolution, at a meeting specially called for that purpose to alter amend, or rescind the same or any of them, or to make new rules.[48]

Possibly it was intended that a special meeting was one called to alter the rules.

The 1865 Act included two of the Rochdale Principles: elections were to be by ballot, and each member was to have only one vote.[49] Also, the association's business was to be conducted strictly on a cash basis, no credit was to be given or taken.[50] This last provision was the only one to give rise to reported litigation.

B. Early Cases Concerning Cash Trading

The Rochdale Pioneers imposed the restriction on their society that trading be on a cash basis only because some of the them remembered that an earlier attempt to form a co-operative store in Rochdale had failed when it overextended credit to members who

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[47] Id., s. 2

[48] Supra, note 43, s. 7

[49] Id., s. 5

[50] Id., s. 10

could not afford to buy groceries.[61] The restriction became a common source of difficulty for co-operatives in the following one hundred years and the principle was eventually abolished.

The first reported case in Canada under a co-operative statute concerned cash trading.[62] By the late half of the nineteenth century the London Co-operative Association Limited regularly purchased goods from the plaintiff the transaction was considered to be for cash if payment was made within thirty days. The invoices were placed before a board meeting of the trustees and if found to be correct, were paid by the treasurer. The plaintiff brought action when the co-operative failed to pay over to the value of $895.60. Counsel for the co-operative argued that the transaction was not for cash, and that therefore the plaintiffs could not recover. Section 5 of the Co-operative Associations Act stated:

> 15. The business of the Association shall be a cash business and strictly so; no credit shall be either given or taken and no officer, member or servant of the Association, or any number of them together, shall have power to contract any debt whatever on its account, except in respect of rent as the premises required for the business, the salary of clerks and servants and such like contract, necessary in the management of the affairs of the Association; everything shall be bought and sold for cash only.[63]

It was held that the co-operative could not incur any debts whatever except as provided in Section 15, and that it was therefore incapable of incurring any liability. The Act provided for publicity of the character of co-operative associations, and persons transacting business with them should enquire as to their powers and liabilities. The court held that for a valid transaction, there must be either prepayment or simultaneous delivery and payment.

The principle of cash trading under the Ontario statute was considered again in Dundas Co-operative Stone-Cutters' Association v. Clarke et al.[64] The defendant had a contract with the Dominion government to construct a section of the Welland Canal and subcontracted work to the plaintiff to build the canal's stone walls. The defendant did not carry out its contract with the Government, and the plaintiff unable to perform his part

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61 Cole, supra, note 1

62 Fitzgerald et al v. London Co-operative Association Limited (1888) 27 U.C.Q.B. 408

63 Burns, supra fn. 2, p. 35

64 [1860] 11 U.C.C.P. 188.

of the contract brought action for loss of profit. The defendant claimed that it was not liable under the contract because it was not a cash transaction and argued that Kinnaird v London Co-operative Association[35] supported its contention that the co-operative could not enter into any contract except for cash. The court observed that section 1 of the Act gave to the association to carry on "any labour, trade or business, and held that a contract necessary to carry on a "labour" or "trade" was to be distinguished from contracts of buying and selling. The court stated that the restriction to cash transactions applied only to buying and selling and that the contract in issue in this case was necessary for managing the Association's affairs and was therefore specifically accepted in the Act.

The courts again considered the effect of the cash trading restriction in 1897 in Saunders v Mackenzie.[36] The Wyoming Co-operative Association regularly purchased on credit from the plaintiffs, R.C. Struthers & Co. The plaintiffs were unable to recover against the co-operative and brought action against the manager, the treasurer and the directors personally. They argued that there was an implied representation or warranty of authority at law of the association to purchase goods on credit. The court held that the plaintiffs must be taken to have known that the defendant co-operative association was such and must have known of the statutory restriction on credit sales. Thus the plaintiffs and the defendants had equal knowledge of the legal restrictions, and there could be no implied representation or warranty. The plaintiffs also argued that the defendants had benefited by reselling the goods, and should account for the value of them. The court came to the rather odd conclusion on that issue that the defendants had used the proceeds from the plaintiff's goods to relieve the defendants from a personal liability for other goods purchased by the association, and that they had therefore derived a personal benefit from the goods.

C. Manitoba Co-operative Associations Act, 1887

Little appears to be known about early consumer co-operatives in western Canada, but it is probable that the increased settlement of the prairies after 1880 brought with it settlers who were aware of co-operative developments in England and eastern Canada. It is known that there was a co-operative store in operation in Winnipeg because on May

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34 Supra, note 33.

35 (1867) 36 L.J.C.P. 66 (Div. Ct.).

16th, 1885 the Winnipeg Co-operative Association placed an advertisement in the Winnipeg Daily Sun.[57]

In 1887 the Manitoba Legislature passed an Act Respecting Co-operative Associations,[58] perhaps in response to the needs of such groups such as the Winnipeg association. The Act was almost identical to the Ontario Act, which had been slightly amended in 1880[59] and 1884.[60] According to Trevena, there may have been a few incorporations under the Act, but it was generally forgotten until 1913

4 EARLY CO-OPERATIVE DEVELOPMENT IN SASKATCHEWAN

A. Saskatchewan Prior to 1913

The first co-operative movement to appear on the prairies The Patrons of Industry was founded in Michigan in 1867 and spread rapidly to Ontario and then in 1891 to Manitoba. The organization was at its most successful in 1895 when there were 330 lodges with a membership of about 5,000 in western Canada.[61] The main purpose of the Patrons of Industry was to improve the economic position of the settlers by co-operation The local lodges placed sufficiently large orders with a department store to obtain discounts. The County Associations pooled orders from the lodges to enough supplies to fill a boxcar. When the car arrived in Regina, the supplies were distributed from the track to farmers who drove in to collect them.[62] The Patrons entered federal politics in 1896 when only one Patron member Mr Douglas from Eastern Assiniboia, was elected; the organization disintegrated because of disagreements among the leaders after the election.[63]

In 1896 two brothers attempted to establish a utopian, co-operative community near Touchwood, on the Qu'Appelle River The promoters in the Constitution explained their purpose.

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57 J. Trevena, Credit Co-operation - A Study, Saskatoon, Co-operative College of Canada, 1970, at 44

58 S.M. 1887, c. 12.

59 S.O. 1880, 43

60 S.O. 1884, c. 27

61 H.S. Patton, Grain Growers Co-operation in Western Canada, Cambridge, Harvard University Press, 1928, at 88

62 J. Bowker, Saskatchewan and Its People, Regina, The S.J. Clarke Publishing Company, 1924, at 441

63 Id., at 438.

> Feeling that the present competitive social system is one of injustice and fraud and directly opposed to the precepts laid down by our Saviour for the guidance of mankind in practising all the forces of nature and the evils springing from selfishness in the human heart, we do unite under the name of the "Hillcrest Industrial Association" for the purpose of acquiring land to build homes for its members to produce from nature sufficient to insure its members against want and the fear of want.
>
> To own and operate factories, mills, lumber etc. To provide educational and recreative facilities to the highest order and to maintain a harmonious relations on the basis of co-operation for the benefit of its members and all mankind in general [64]

The membership grew to about fifty people; they operated a blacksmith shop, a carpentry shop, a laundry and lumber mills, and produced flour and lumber. The community was not as successful as the founders had anticipated partly because a railway that was expected was never constructed and in 1900 the community was unceremoniously dissolved.

Political lobbying in Ottawa by Mr. Douglas led to the enactment of The Manitoba Grain Act in 1900.[65] This Act was intended to palliate the difficulties western grain farmers were having with the C.P.R.--private elevator monopoly. By the Act, farmers had the legal right to obtain railway cars directly and to load them at the over loading platforms or through flat warehouses; they no longer had to depend on the line elevator companies. However the railways were unable to move a large portion of the record crop in 1901 before freeze up at the Lakehead, and both businessmen and farmers were indignant. W.R. Motherwell, a farmer from Indian Head who had observed the failure of the Patrons of Industry in the 1890's, organized the Territorial Grain Growers Association (T.G.G.A.), with the object of making farmers to counter the domination of the private grain handling monopoly.[66] The Association successfully lobbied to enforce farmers' rights under the Manitoba Grain Act, and effected amendments to the Act favourable to farmers.[67] The Province of Saskatchewan was created in 1905 and in the

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64 G. Johnson, The Hillcrest Industrial Association, (1961), a Saskatchewan History at U.

65 Smith, supra fn 61, at 39-54.

66 Id., at 64.

67 W.A. Mackintosh, Agricultural Co-operation in Western Canada, Toronto, Ryerson Press, 1924, at 6

following year the name of the T.G.G.A. was changed to the Saskatchewan Grain Growers Association (S.G.G.A.).

In 1904 E.A. Partridge, a Steinbach farmer proposed at a T.G.G.A. meeting that a farmers' company be formed to sell grain co-operatively.[68] He believed that a farmers' company operating in the communities across the Winnipeg Grain Exchange would be a financial success, and would eliminate price fixing by the private grain companies. The grain growers' association did not initially support Partridge's proposal, but in 1906, Partridge and a group of Steinbach grain growers formed the Grain Growers Grain Co. Ltd. (G.G.G.C.). The new company quickly obtained a seat on the Exchange and despite great hostility from the private trade and an expulsion order that had to be reversed by the Manitoba government, the G.G.G.C. succeeded in maintaining its position at the Exchange. By 1912 the company had 27,000 farmer-members and was selling 28 million bushels of grain annually.[69] The company recognized that farmers sell products at wholesale prices but generally purchase as retail consumers. The company considered entering the business of farm supply purchasing, in addition to its regular business of grain marketing,[70] but did not do so until 1913.

B. The Role of The Co-operative Union and of George Keen

The Co-operative Union of Canada was formed on March 6th, 1909, largely at the initiative of George Keen, then President of an Ontario co-operative.[72] This was to have a profound effect on the development of co-operatives and co-operative law in Saskatchewan and elsewhere in Canada. The Co-operative Union was instituted to

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[68] Id., at 18

[69] See MacPherson, The Co-operative Movement on the Prairies, 1900-1956 "Canadian Historical Association Booklet No. 18" Ottawa, 1979, at 8

[70] Kerr, note 61, at 268.

[72] See MacPherson, Building And Protecting The Co-operative Movement, A Brief History of The Co-operative Union of Canada, 1909-1984, CUC, Ottawa, undated at 2

promote co-operatives and co-operation in general but for the purposes of this paper one object set out in its by-laws is of particular interest. By law 2(d) read as follows:[71]

> to protect the interests of the co-operative movement by action whatever necessary as to Federal legislation and administration and through the provincial or regional sections as to provincial legislation and administration.

This by-law indicates that the Co-operative Union was organized with regional and provincial sections to better enable it to fulfil its mandate.[72] Keen's view was that the provincial sections of the CUC should be expected to "exercise more influence in provincial legislatures than can be expected by the Dominion co-operators and officials."[73] Keen also warned provincial sections to "carefully watch Bills which are introduced into Provincial legislative assemblies, and particularly by private trade organizations. Actions against co-operation in that field are not likely to be frontal attacks. It will be by indirection. The word "co-operative" will not appear."[74]

From the time of his appointment as the first General Secretary of the Union in 909 and for over thirty five years thereafter Keen corresponded prolifically with Saskatchewan co-operatives and co-operators. He dispensed advice and assistance on many matters of importance to co-operatives including co-operative legislation. He made regular trips to Saskatchewan to counsel co-operators and he built up a close partnership with the Co-operatives and Marketing Branch of the Saskatchewan Department of Agriculture especially with W W Waldron and his successor E.N

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71 Co-operative Union of Canada, Public Archives of Canada, Call No. MG 28, I 10, Vol. 1. By laws of the Co-operative Union of Canada. The failure to obtain the passage of Federal co-operatives legislation was very much on the minds of the first activists in the Co-operative Union. This concern continued for a very long period of time. At least in the 1940s, 1950s, 1960's and 1970's Congresses, for example, resolutions were passed calling on the Federal government to introduce legislation on co-operatives and urging each of the provincial governments to introduce co-operative credit legislation and to amend their various statutes dealing with co-operatives to permit co-operatives in one province to operate branches in other provinces up to a distance of ten miles away from the interprovincial boundary. Dissatisfaction with the legislative regime is illustrated by the fact that when Canadian Co-operative Implements Ltd was established in 1948 it was incorporated under the Companies Act, 1934. See October 20th, 1947 letter from Waldron to Keen, id., Vol 37 General Correspondence 1936 C D.

72 However, the Public Archives show that the CUC's presence in Saskatchewan was often regarded as unsatisfactory. It appears, too, that the provincial sections either did not work well or were not encouraged, see the Development of 1930-1938 id., Vol. 3, Congresses, 1918, 1930 1938, 1932, 1933, 1936. It was not until the 1950 Congress in Toronto that a resolution was passed to establish a Saskatchewan section of the CUC.

74 Circular from Keen to affiliated co-operatives, July 31st, 1940. id.

73 Circular from Keen, National Co-operative Administration, 1941. id.

Arneson. The Branch assisted with Kean's visit to Saskatchewan and its officials had frequent meetings with him when he was in the Province. Waldron even urged co-operative men to join the CUC.[76] Kean's assistance in the push for co-operative legislation in Saskatchewan is well documented.[77]

C Progress in the West

In 1911, the G.G.G.C obtained a new federal charter by special Act of Parliament.[78] In order to broaden its territorial scope and operations. The Act incorporated several co-operative features. Stockholders were required to be farmers, farm owners or farmers' wives, individual stockholdings were restricted to a value of $1,000 each shareholder had only one vote and employees could be distributed no other than a share basis.[79] The objects of the company were couched in very broad terms:

> To produce, manufacture, export, import, buy, sell deal in and deal with all cereals and all products or by products of the farm, and all machinery implements, goods, wares and merchandise which may be used in the production and manufacture of the products of the farm, and all articles, substances and things which may be utilized in the said premises or in the maintenance, cultivation, improvement and development of farms.[80]

The Act passed in the House despite considerable opposition from members sympathetic to the interests of rural merchants.[81] The company had a strong, central organization, but for it to operate an effective farm supply business organization at local centres was necessary.[82] In 1912, the company loaned the Manitoba government election with the intention of using the elevator system to distribute farm supplies.[83] In 1913, the

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[76] November 20th, 1909 letter from Waldron to Kean, id., Vol. 93 (General Correspondence, 1909), C-H.

[77] See e.g. correspondence between Kean and the Saskatchewan Registrar of Joint Stock Companies id., Vol 2, (General Correspondence 1909-1910).

[78] S.C. 1911, c. 26

[79] Id., ss. 4, 5, 6, 8, 17

[80] Id., s. 11

[81] Kerans, note 55, at 288

[82] Id., at 292.

[83] Id., at 341.

Co-operative Supply Department was established in Winnipeg, and initially supplied flour feed, coal and apples. In 1918-19, 8,926 tons of apples and 5 336 barrels of apples were supplied. In 1919 lumber binder twine, fencing and farm implements were added.[84]

Under pressure from the Manitoba Grain Growers Association the government of Manitoba in 1917 established a system of government-owned elevators.[85] The farmers anticipated that this move would result in better terms for farmers selling grain, but the government system did not receive sufficient support from farmers and lost large sums of money during its two years of operation. The Manitoba government appeared to be relieved to lease the system to the [illegible] in 1922. In Saskatchewan pressure from farmers for a government-owned elevator system resulted in a Royal Commission to study their grievances, and the Commission recommended that a co-operative farmer-owned and locally controlled elevator company be established with government assistance.[86] The government accepted the Commission's recommendations and in 1911 the Saskatchewan Co-operative Elevator Company was incorporated by a special Act of the Legislature.[87] The company was successful and in 1913 the Alberta Legislature passed a similar Act to incorporate the Alberta Farmers' Co-operative Elevator Company.[88] The Alberta Act, in addition to empowering the company to operate a line of elevators and to deal in grain also provided that the company could engage in the supply of goods and chattels to farmers;[89] the Alberta company immediately commenced a co-operative supply department.

In Saskatchewan co-operative trading was initiated differently. In 1913 the Provincial government established a Royal Commission to investigate the high cost and difficulty of obtaining agricultural credit. The Commission in its extensive report, considered the problems of agricultural credit, but also addressed broader problems facing

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84 Id., at 141

85 Supra, note 61, at 79-80.

86 Report of the Elevator Commission, Regina, 1911

87 Saskatchewan Co-operative Elevator Act, S.S. 1911 c. 36.

88 Alberta Farmers Co-operative Elevator Act, S.A. 1913, c.

89 Id., s. 5.

the rural economy.[30] The solution proposed by the commissioners as the encouragement of co-operative effort. They stated:

> In view of the changing conditions of our economic life the Commissioners believe that a solution of our problems must be sought along two lines, which after all do not greatly [sic] differ
>
> 1. The spread of co-operative effort especially as regards, on the direction of selling and purchasing
>
> 2. The fostering of financial institutions of our own, with sympathies for our own problems and control by our own people.[31]

The first recommendation of the Commission was as follows:

> 1. That, inasmuch as in the experience of older communities cheaper agricultural credit is invariably associated intimately with other phases of agricultural co-operation, such additional legislation be enacted by the Legislature and information and guidance provided by the government as will further facilitate on the part of the farmers of the province the establishment on a sound basis of a system of local and central rural co-operative societies for purchasing and selling farm products and supplies.[32]

The government responded by establishing the Co-operative Organization Branch within the Department of Agriculture "to foster in every legitimate way co-operative organization of farmers for purposes of production, marketing and purchasing of supplies".[33] The first Director of the Branch was W.W. Thomson, an agricultural graduate who had studied agricultural co-operation in the United States and Europe.[34] The legislature also passed two statutes in response to the Commission's report: The Saskatchewan Co-operative Farm Mortgage Association Act[35]

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30 Report of the Agricultural Credit Commission of the Province of Saskatchewan, Regina, 1913

31 Id., at 244.

32 Id., at 317

33 Annual Report, Co-operative Organization Branch, 1916, at 9.

34 Public Service Monthly October 1935, at 11.

35 S.S. 1913, c. 61

and the Agricultural Co-operative Associations Act.[96] Prior to 1913 some local groups had been formed to order supplies co-operatively. The purpose of the Agricultural Co-operative Associations Act was to provide legal status for such associations and to simplify incorporation procedures for new associations. Even though prior to the enactment of co-operative legislation co-operatives could only be incorporated under the Companies Act,[97] model co-operative by-laws for such incorporation were a long time coming as they were for co-operatives that did not qualify for incorporation under the Agricultural Co-operative Associations Act.[98]

5. THE SASKATCHEWAN AGRICULTURAL CO-OPERATIVE ASSOCIATIONS ACT 1913

The Act provided that five or more persons could incorporate an association "for the purpose of producing, purchasing or selling livestock, farm products or supplies on the co-operative plan."[99] "Supplies" was defined to "building and fencing material, fuel, flour, feed and such other commodities as may be shipped in car lots and distributed from a warehouse, the word shall not be interpreted as applying to a retail business."[100] This definition immediately gave rise to uncertainty as to the restrictions imposed on the association. For example, was it necessary to ship building and fencing material, fuel, flour and feed" in carlots, or did the restriction apply only to "commodities"? The Deputy Attorney-General T.A. Colclough (see his interpretation of the definition to the W.W. Thomson, Registrar of Agricultural Co-operative Associations, in a letter dated April 16th 1914)[101] He observed that the Interpretation Act required that the expression "may" in a statute should be construed as permissive, but concluded that to do so would not give a sensible meaning, and that the word should therefore be considered as

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96 R.S. 1909, c. 88.

97 1903, c. 20, as am.

98 A December 1909 letter from Knox to John Motherwell of Yorkton indicated that a model set of by-laws was not available, although it appeared to be the practice for established co-operatives to send copies of their by-laws to new societies, Knox, note 92, Vol. 11 General Correspondence--1909 A-L. The reason for this given by Knox was that "we have no definite statute for the whole Province. Letter from Knox to H. Smith of Star City Saskatchewan, id., Vol. 13, General Correspondence 1910, M-T. Standard By-laws did become available from the Department of Agriculture in 1914.

99 Knox, note 97 s. 4.

100 Id., s. 2(3).

101 April 16th, 1914 letter from T.A. Colclough to W. W. Thomson, Director, Co-operative Organizations, Saskatchewan Department of Agriculture, Saskatchewan Archives, Call No. 418, box 1

imperative. He further contended that "it may be shipped in carlots relating only to 'commodities,' and therefore that "building and framing materials, fuel, flour [and] feed" need not be shipped in carlots. Furthermore, a carlot of commodities need not consist of an entire carlot of one commodity but could contain a number of different commodities. In all cases, however, Colclough was of the view that supplies must be purchased in greater than retail quantities.

The restriction on cash trading opposed by the Stockdale Pioneers and contained in the earlier Ontario Act was made applicable to associations in Saskatchewan. An exception permitted associations to purchase on credit coal coming to be occupied as business premises, and to take out a mortgage to secure the unpaid balance.[101]

The Act initially required the seventy five per cent of the shareholders to 'agriculturists'[102] thereby effectively preventing the organization of co-operatives in urban centres or amongst industrial workers.[103] The liability of a shareholder to the creditors of the association was limited to the unpaid balance on his shares.[104] At meetings each shareholder was entitled to one vote, and voting by proxy was prohibited.[105] The association was required to send to the Registrar of Co-operative Associations each January an annual return containing an audited financial statement for the previous year up to the 31st of December. The return was also to be provided free of charge to any shareholder on request.[106]

A formula was provided for apportion an association's profits. First, the directors were to set aside not less than 10% of the net profits for a reserve fund until the fund

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[100] Supra, note 97 s. 5.

[101] Id., s. 8

[102] Cf. December 31st letter from Thomson to Hawk, supra, note 72, General Correspondence, Vol. 13, Ref. T-M. Thomson noted that: "the Act is designed primarily to aid agricultural co-operative associations, but as 51% of the shareholders in any association may belong to the urban population the operation is by no means confined exclusively to the farming community." It appears, however that Thomson thought that farming communities were more likely to have people experienced in business than would urban groups looking to form co-operatives consequently it was safer to encourage co-operatives in rural areas than in urban ones. He wrote: Any restrictions placed on the business of associations will I trust prove not to check to their development, but rather a safeguard which will prevent many failures which would otherwise result from placing inexperienced men in charge of exceptional business materials. There was also a recognition, on the part of Thomson, that there was a considerable need to develop the "co-operative spirit" among the people of Saskatchewan.

[103] Supra, note 97 s. 11.

[104] Id., s. 14.

[105] Id., s. 11

had amounted to at least thirty per cent of the paid-up capital stock. Then six per cent interest was to be paid on the paid up capital stock. The remainder of the profits was to be divided among the patrons (whether shareholders or not) in proportion to the volume of business conducted by each patron with the association. A proviso permitted the association to retain the patronage dividend of a patron who was not a shareholder until the par value of one share had accumulated when a share certificate was to be issued to the patron.[108] The Act does not refer to 'membership' and it must be concluded that there is no distinction between a shareholder and a member of the association. The standard by laws approved pursuant to the Act provide that either the directors or "not less than one-fifth of the shareholders" may requisition a special meeting but that if a quorum is not present and the meeting was convened "upon the requisition of members" it shall be dissolved.[109] These provisions imply that 'member' and 'shareholder' are synonymous under the Act. It follows that a shareholder who had been allotted a share according to the above procedure would have all the same rights in the association as a shareholder who had voluntarily subscribed for a share.

Dissolution of the association required the consent of three-fourths of the shareholders, testified to by their signatures on an instrument of dissolution.[110] This provision later caused difficulty when associations wished to dissolve and there was one-quarter of the shareholders who for one reason or another ceased to be active members.

The 1913 Act required the Registrar to prepare standard by laws not inconsistent with the Act that would be applicable to every incorporated association and to submit them for approval to the Lieutenant-Governor-in Council.[111] These standard by laws were approved by Order-in-Council on January 6 1914.[112] The Act permitted co-operatives to pass supplemental by laws of their own that would become operative if approved by the Registrar and if not inconsistent with the standard by laws.[113] The standard by laws provided a comprehensive code for the internal management of the as-

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108 Id., s 18.

109 Standard By-laws governing all Associations incorporated under the Agricultural Co-operative Associations Act, Saskatchewan Gazette, 1914, vol X no 1, at 8, Article 1.

110 Supra, note 97 s. 28.

111 Id., s. 8.

112 Supra, note 111.

113 Supra, note 111.

operative, and since they were binding on all co-operatives, them by-laws became the basis for the management of co-operatives in Saskatchewan. These standard by laws were amended from time to time, but remained in force until 1953 when they were repealed and replaced.[114]

The standard by-laws of 1944 included precise requirements for meetings. The first general meeting was to be held within two months of the association registering at a time and place to be determined by the provisional directors.[115] The term "provisional directors" is not defined but must be presumed to refer to the five or more incorporators mentioned in section 4 of the Act. The by-laws further stipulated that the co-operative hold its annual meeting on the second Wednesday of January.[116] Thus all co-operatives held their annual meeting on the same day of the year. Special meetings could be held at the directors' call or by written requisition (stating the object of the meeting) of not less than one-fifth of the shareholders. When the directors received the requisition, they were required to call the meeting forthwith, and if they failed to do so within 21 days from the date of the requisition, the requisitionists or any other shareholders amounting to the required number could call the meeting. Each shareholder was to receive a notice in the mail at least 10 days prior to the meeting, and an announcement of the meeting was to be placed in at least one newspaper circulating in the neighbourhood. A quorum for any meeting was one fifth of the registered shareholders.[117]

The effect of these standard by-laws was that a co-operative customarily held just one meeting in the normal course of events - the annual meeting. Between annual meetings the directors administered and controlled the business and were not required to involve the members. This was perhaps one of the most unfortunate aspects of the by-laws, since it artificially restricted the amount of interest that members were expected to take in their co-operative. The Rochedale Equitable Pioneers Society held quarterly meetings[118] at which the directors were expected to respond to the members' concerns.

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114 Co-operation Act, R.S. 1953, c. 272.

115 Supra, note 110, Article

116 Id.

117 Id.

118 Supra, note 17

early Saskatchewan co-operatives, which had a significant failure rate (50% between 1914 and 1935),[109] might have benefited from more frequent members' meetings.

The voting provisions in the standard by-laws are as follows:

> At all meetings of the association each shareholder in good standing shall have one vote and a majority vote of the shareholders present shall decide all questions.[110]

The phrase "in good standing" is nowhere defined and its meaning is uncertain. One might assume that it referred to a shareholder who had fully paid for a share, but shares were payable by instalments as provided by the by-laws.[111] In the early co-operatives, shares were often not fully paid up and it is improbable that the bylaw was intended to disenfranchise such a large group. More probably a shareholder was considered to be in good standing if he had paid all the instalments that were due to be paid under the by-laws.

The above voting provisions must be read as subject to other sections which provided for other than a majority vote. For example the supplemental by-law concerning removal of directors was as follows:

> The association at any annual meeting or at any special meeting, duly called for that purpose may by a special resolution, endorsed by a majority of the registered shareholders, remove any director before the expiration of his period of office and may by an ordinary resolution appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.[112]

Neither "special resolution" nor "ordinary resolution" are defined in the Act or the by-laws, but "special resolution" was defined in The Companies Act, as follows:

> s 128 A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may

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[109] Co-operative Secretary Associations in The Province of Saskatchewan, Part I, Department of Agriculture Bulletin No. 85-A, Regina, 1936, at 15.

[110] Supra, note 91 Article 8.

[111] Supra, note 88 s. 8

[112] Supra, note 110, Article 10, (emphasis added).

be present in person or by proxy in cases where by the regulations present are allowed at any general meeting of which notice specifying the intention to propose such resolution has been duly given; and such resolution has been confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed.[130]

Since the supplemental by law refers to a "special resolution, endorsed by a majority of the registered shareholders" its drafters probably intended a "special resolution" to be a resolution passed by a three-fourths majority of the registered shareholders at a properly called general or special meeting and entailed under the by laws to vote.

The standard by laws provided that supplemental by-laws necessary for the regulation of the association's business could be adopted at a general or special meeting but in that case by a two-thirds majority of the shareholders present.[134]

The standard by laws provided that the board of directors be composed of three, six or nine members, elected from the shareholders at the first general meeting. One-third of the board were elected to serve for one year one-third for two years and one-third for three years.[135] This method of election provided continuity and a degree of stability as the board would always include some more experienced members. The gradual replacement of board members has continued to be the general practice in Saskatchewan co-operatives to the present day.

The auditor was elected at the annual meeting of shareholders and the president, vice-president and the secretary treasurer were elected at the first board meeting after the annual meeting. It was not required that the secretary-treasurer be a director. If the office of the auditor or of a director became vacant, the board appointed a replacement to serve out the rest of that officer's term.[136]

The general duties and powers of the directors were outlined in the standard by-laws as follows:

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[130] S.S.B. 1913 c 72, s 131.

[134] Supra, note 130, Article VIII

[135] Ibid., Article III.

[136] Ibid.

> The directors shall have the general management and control of the business and property of the association and shall have power
>
> a) To allot and transfer the capital stock of the association subject to the provisions of section 8 of The Agricultural Co-operative Association Act
>
> b) To engage, define the duties and fix the remuneration of such officers and employees as they may deem necessary for the carrying on of the business of the association [197]

This provision appeared to give exclusive control of the co-operative to the board of directors and as such, was in conflict with the principle of democratic control as understood by early co-operators. When the Rochdale Pioneers formulated the co-operative principles in the mid nineteenth century the principle of democratic control was given particular emphasis. The early co-operators anticipated a participatory form of democracy by which the co-operative members would maintain an active interest in the business affairs of the co-operative, attend meetings regularly and make resolutions at these meetings. They perceived the board of directors as a body whose role was to give effect the policies developed by the members and whose powers would be exercised subject to the wishes of the members as expressed in general meetings. The principle that the directors have the exclusive management and control of the business was borrowed from company law and it seems possible that the rigid application of this principle to the area of co-operative law may have led to unnecessary conflict between co-operative members and the boards of directors that represent them.

The relationship between co-operative law and company law has been an uncertain one. In some respects a co-operative is simply a particular type of limited liability company to which certain legislative provisions should apply. For this reason and perhaps because lawyers employed to draft co-operative statutes would normally be familiar with company law, co-operative statutes are often modelled closely on similar company law statutes. However co-operatives may also be regarded as a unique enterprise with social as well as economic objectives, and it can be argued that the social objectives have not been given sufficient emphasis in co-operative legislation.

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[197] Id., Article IV

The 1921 Agricultural Co-operations Act deemed every association to be a company within the meaning of section 142 of The Companies Act.[148] The Act also made sections 21 to 38 inclusive and sections 40 to 61 inclusive of The Companies Act applicable to co-operative associations. These sections concern the distribution of capital and the liability of members and directors. Thus the definition of "special resolution" a matter raised earlier is not expressly applicable to co-operatives.

The application of the Companies Act to agricultural co-operatives was considered by the Deputy Attorney-General shortly after the 1921 Act was proclaimed, when an association failed to hold its first general meeting within two months of registration and the Registrar requested an opinion as to whether the association should be considered to be dissolved for failing to hold its first general meeting within the time appointed by its standard by laws.[149] Section 118 of the Companies Act provided that a court could direct that a company be wound up or make any other order as may be just on the petition of any shareholder where the company has failed to hold its first general meeting.[150] The Deputy Attorney-General stated that since Section 118 was not expressly made applicable to co-operative associations, the procedure in that section was not applicable and that a co-operative could only be dissolved in accordance with sections 25 and 26 by resolution of the shareholders. He further stated that the law supports the continuance of a company unless some strong reason is put forward to persuade the court to regard the company as dissolved, and therefore, that the by law concerning the first general meeting must be considered to be directory rather than imperative.

The final section of the 1924 standard by-laws prescribed the order of business of the annual meeting:

1) The meeting to be called to order by the president or acting president
2) The reading and disposal of the minutes of the preceeding meetings.
3) Business arising out of the minutes.
4) Reports of standing committees appointed at a previous meeting
5) Reports of Special committees appointed at a previous meeting.
6) Reports of officers
7) Reports of auditor
8) Unfinished business.
9) Nomination and election of officers for the ensuing year
10) Appointment of auditor
11) New business.[151]

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148 Supra, note 80 s 8 (c).

149 June 9th, 1924 letter from T.A. Crerar to Thomson, supra, note 108.

150 R.S.S. 1909 '91 c. 116.

151 Supra, note 119, art 11.

This rather rigid agenda (with minor modifications) continues to be followed by Saskatchewan co-operatives. Consequently during meetings the members must listen to a large number of sometimes lengthy reports before they have an opportunity to raise new matters that concern them. Isaak Trevino, the former Secretary of Federated Co-operatives Limited, has recently suggested that this rigid meeting format may have had the effect of reducing member participation and of imposing an artificial barrier between members and management. He coined the term "historical democracy" to describe this type of members' meeting.[131]

In summary the Act of 1913 and the standard by laws were a reasonable tool for the early days operation of community co-operatives in Saskatchewan, but some provisions were destined to create difficulties for some co-operatives.

There was a good deal of correspondence between Keen and Saskatchewan government officials about the 1913 Act. In particular Keen was disappointed that co-operative retails and urban organizations were excluded from the purview of the Act. Incorporation of these co-operatives remained under the Companies Ordinance. He was also concerned about the requirement for cash only transactions.[132] It is apparent that the exclusion of retails from the scope of the Act was as a result of the failure in 1913 of the Saskatchewan Purchasing Company.[133] In any case the Government had not intended the Act to be a general co-operatives statute.[134] Keen concluded that the Act was a compromise but that he should not be too critical of it as he was anxious not to prejudice the passage of a federal statute.[135]

Neasham, in his correspondence with Thompson Keen was very critical admitting with regret that "I am unable to say much in its favor."[136] Others were opposed to it too, and Chipman, editor of the Grain Growers' Guide while also

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[130] Supra, note 9

[131] January 19th, 1914 letter from Keen to Thompson, supra note 71, Vol. 8, General Correspondence, 1914, A-M.

[132] January 20th 1914 letter from Thomson to Keen, id., Vol. 14, General Correspondence, 1914, N-Y. See December 6th, 1913 letter from Asst. Sec. Hill to W.F. Chipman, Editor of the Grain Growers' Guide, explaining the collapse of the Saskatchewan Purchasing Company Ltd., id.

[133] February 12th, 1914 letter from Thomson to Keen id.

[134] January 20th, 1914 letter from Thomson to Keen, id.

[135] Supra, note 71 In this letter Keen referred to the Act as deliberately Chipmanic, co-operative recall moves and wrote: By virtually excluding urban retailers from having co-operative societies, a section in the people quite as much in need of the advantages of the movement were legislated into creating similar legislation

considering it wise to be supportive of the initiative, indicated to Keen that he did not think that the Saskatchewan government wanted to enact any type of co-operative act and that the 1913 Act was a compromise. Chipman further indicated that the "co-operative spirit ... is becoming so strong that it cannot be much longer kept down".[138] Thompson's attempts to gain more support from Keen were not very successful. He stressed that the Act was a first step and that the approach taken by the Act was "both safer and more economical than the combatting of a retail business". According to Thompson the failure of the Saskatchewan Purchasing Company prompted the trading restrictions in the Act.[139] It is quite likely however that the restrictions were primarily a result of opposition from private business interests.[140]

Another matter that Keen thought needed attention in co-operative legislation was a definitive provision to clarify what organizations the Act was intended to cover.

It is difficult to assess the impact of Keen's concerns, but it was likely considerable. He urged governments to consult with co-operatives before enacting legislative amendments,[141] and Thompson sent also a copy of amendment to the Agricultural Co-operative Associations Act prior to their enactment. The 1913 amendments, for example, included changes to permit the operation of co-operative retail stores (although 75% of the members still had to be farmers) and made the cash business requirements less stringent.[142] Keen also attempted to influence Waldron in following other provincial examples to improve the Saskatchewan legislation.[143] There may have been competition between Keen and Saskatchewan co-operators on some matters of principle and legislation. Keen was not always involved in developments in

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138 January 20th, 1914 letter from Chipman to Keen, id.

139 January 30th, 1914 letter from Thompson to Keen, PAMS, note 135.

140 See Hamilton 4th, 1913 letter from Hill to Chipman PAMS, note 135. Thompson advised Keen that the practice of co-operatives selling their goods to non "who up serious competition with local merchants" See also, November 3rd, 1913 letter from Thomas, to Keen PAMS, note 73 Vol. 32, General Correspondence, 1913, A-K.

141 December 7th, 1910 letter from Keen to the Premier of eight provinces, PAMS, note 71 vol. 32, General Correspondence 1910 A T

142 September 30th, and October 6th, 1913 letters from Thompson to Keen, id.; January 4th 1914 letter from Waldron to Keen, PAMS, note 73, Vol 44, General Correspondence, 1914, C G

143 October 18th, 1910 letter from Waldron to Keen, id.

it appears he would have died,[144] and there was some disagreement.[145] As the lawyer W.F. Francis became more involved in the process of advising the co-operatives on legislation, Knox was put into contact with him.[146]

6. DEVELOPMENTS FOLLOWING THE 1913 ACT

Following enactment of the Agricultural Co-operative Associations Act, there was a wave of enthusiasm for the organization of local co-operatives. Thomson reported in April, 1914 that the Co-operative Organization Branch was receiving 5 enquiries per day regarding incorporation;[147] by the end of 1914 18 associations had been registered.[148] A few of these co-operatives operated stores, but most of them were operated as local purchasing associations with those a store. Local merchants and wholesalers frequently hindered the development of local co-operatives by refusing to sell to them, and it more quickly realized they could benefit by owning their own wholesale organization.[149] At the 1914 annual convention of the S.G.G.A. it was resolved to form a trading department and to set aside $1,000 was set aside for the purpose. In the first six months of operation in 1914 the Trading Department handled $300,000 in supplies at an estimated saving to the members of $75,000.[150]

The special Act of the legislature incorporating the S.G.G.A. did not provide for trading operations,[151] and the Act was therefore amended in 1915 on a type the S.G.G.A. to carry on the business of wholesale suppliers for all commodities ordinarily used in agriculture.[152] An amendment to the Co-operative Associations Act permitted an association to enroll its shareholders, patrons customers or other its members as

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144 January 23rd, 1913 letter from Knox to Watkins, supra, note 73. Vol. 30 General Correspondence, 1913, C

145 January 14th, 1913 letter from Watkins to Robertson; January 15th, 1913 letter from Watkins to Scott; January 20th, 1913 letter from Knox to Watkins, id.

146 February 4th, 1913 letter from Watkins to Knox, id.

147 Public Service Monthly, Regina, April, 1914 vol. 2, no. 8, at 15.

148 Tenth Annual Report of the Department of Agriculture of the Province of Saskatchewan, Regina, 1915, at 201

149 Supra, note 61 at 203.

150 Id., at 204.

151 S.S. 1908, c. 28.

152 S.S. 1914 c. 30.

members of the S.G.G.A. and enabled the association to enter into any arrangement for joint purchase, sharing profits, union of interests, co-operation, joint adventure, reciprocal concessions or other plan to further the objects of either association. The amendment further provided that the association could sell farm supplies only to its shareholders and to members of the S.G.G.A.[153]

The law's response to common practices caused problems for co-operatives. For example, many early co-operatives purchased car lots of goods and distributed them directly from the truck. In Village of Hafford v John Gilders, the issue was whether the Hafford Agricultural Co-operative Association of which Gilders was the secretary was a trademark within as defined by The Village Act. The judge delivered his judgement at the Great West Hotel in Hafford on the day following the trial and found in favour of the village.[154] The result was that the co-operative required a licence to distribute goods from the truck.

In the 1916 amendments the ambiguous definition of "supplies" in the 1913 Act was repealed and associations were empowered "to do anything incidental to the attainment of the said objects, and to forward the interests of farmers and producers in every legitimate way and to purchase, acquire, hold and dispose of real property in Saskatchewan required for the purposes of the association, and to alienate the same at pleasure."[155] While, this amendment appears on first reading to have broadened the powers of the associations, the objects remained. In section 4 referred to in the amendment were used to restrict the co-operative to "producing, purchasing or selling livestock farm products or supplies as the co-operative plan. On this basis, the Lethbridge Grain Growers Co-operative Association Limited was prevented in 1916 from acting as a hail insurance agent,[156] and in 1920 the Deputy Attorney General advised Thomson that he had "grave doubts" whether the Act allowed a group of farmers to operate a blacksmith's shop.[157] In 1918 the Act was amended to permit co-operatives to operate community halls,[158] and in 1922 the purpose section was widened by permitting

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153 S.S. 1915, c. 37

154 This case is unreported but is referred to in a newspaper clipping in Saskatchewan Archives, [illegible] note 102, Coll No. T-168, file No.

155 Supra, note 154.

156 July 28th, 1916, letter from Hallbrough to Thomson, id.

157 January 16th 1920 letter from Hallbrough to Thomson, id.

158 S.S. 1916, c. 36

co-operatives to establish and patronize on the co-operative plan any business in procuring and selling farm supplies or rendering services of necessary value to farmers."[99] Following this amendment, co-operatives were permitted to act as fire insurance agents.[100]

The 1913 Act had provided for dissolution of an insolvent co-operative that was still in operation, but since by the Agricultural Co-operatives Act, co-operatives are deemed to be companies under The Companies Act,[101] it followed the The Companies Winding-Up Act was applicable to co-operatives. Under that Act, it was possible to apply to a court for a winding up order which would be granted if the court was of the opinion that it was just and equitable to do so.[102] In 1923, The Agricultural Co-operatives Act was amended to require the liquidators acting under The Companies Winding Up Act to notify the Registrar of Agricultural Co-operative Associations of the liquidation.[103]

A. Cash Trading

The restriction to cash trading was amended in 1915 to read as follows:

> 5(4) The association shall, except as hereafter provided, pay for all goods purchased upon delivery: Provided that any association may purchase upon credit from any other agricultural co-operative association or any company association or society incorporated by any special Act of the Province of Saskatchewan having objects wholly or in part similar to the agricultural co-operative association.
>
> (5) No association shall sell to goods, wares or merchandise to its shareholders patrons or customers except for cash. No credit shall be given.
>
> 6) The directors shall not have power to pledge the credit of the association except as aforesaid or for the purchase price or on account of business premises, salaries and incidental

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99 S.S. 1913 c.13, s. 12, s. 2.

100 March 26th, 1914 letter from Deputy Attorney-General Haultain to E.N. Auld, Deputy Minister of Agriculture, quoted in note 100

101 S.S. 1913, c. 34 now RSS, c. 27 s. 3, S.S. 1913, c. 68, s. 2

102 R.S.S. 1909 c. 65, s. 6

103 S.S. 1913, c. 68, s.

> expenses, or for moneys temporarily borrowed to pay for goods purchased or expenses incurred in connection therewith or the shipment thereof.[186]

This restriction on cash trading was a source of concern to both the managers of the co-operatives and the wholesalers. In the fall of 1919 many wholesale suppliers petitioned the provincial government to remove the restrictions. They argued that they were very willing to do business with co-operatives, that the normal method of doing business was to provide credit, and that credit was generally being provided despite the restriction in the Act. They stated that they were willing to put their faith in the farmers organizations and that farmers, the co-operatives and the suppliers would benefit from credit transactions.[187] Their cause was endorsed by R.W. Ketcheson, the manager of the Davidson Co-operative Association in a letter to the Minister of Agriculture, C.A. Dunning.[188] The Minister replied in a letter three days later as follows:

> I find a somewhat divided opinion, and the division of opinion seems to follow broadly the lines between the strong association such as yours and the smaller one just reaching out. So far as the wholesalers are concerned, they undoubtedly do desire the cash section eliminated, but I cannot but wonder if this desire is altogether in the interests of the small struggling associations which a comparatively small amount of unwise debt might easily put out of business. We must bear in mind in considering that question that a very large proportion of our co-operative associations are still in a pioneer condition. Many of their managers are just beginning to acquire experience and the restriction to cash dealing in the case of an association managed by men of limited experience is not without its beneficial features.[189]

A compromise was adopted in 1922, when the Act was amended to permit a small co-operative with a paid-up capital of at least $5,000 to pass a supplementary by-law

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186 S.S. 1919, ch. 2.

187 Saskatchewan Archives, Fonds No. 340 File X-6-2, Acting, letter 180, September 18th, 1919 letter from Ashdown Hardware, and also October 24th 1919 letter from Commonwealth Limited, at the time the largest wholesale house in Canada, to Premier Martin.

188 Ibid., December 26th, 1919 letter from Ketcheson to Dunning.

189 Ibid., December 29th, 1919 letter from Dunning to Ketcheson. At the time, the Davidson Co-operative was one of the largest and most successful in the province.

making the restrictions on credit transactions in the Act inapplicable.[159] The only binding restriction was considered in Grandview & Scott Ltd. v Tuxford Grain Growers Co-operative Association Limited.[160] The plaintiff company sold goods to the association but was not paid for them. Some of the goods were in turn sold to customers. The Saskatchewan Court of Appeal held that the intention of the Act was to prohibit credit transactions and that the customer was therefore ultra vires the association. However the court went on to hold that since the sale of goods was null and void the property in the goods remained with the plaintiff. The court held that unsold goods should be returned to the plaintiff and that the association should account to the plaintiff for the proceeds of goods already sold. The decision clearly went further than earlier cases to protect the interests of associations' suppliers.

B Powers of Associations Under the Act

In 1924 the Attorney-General was asked for an opinion as to whether a co-operative could increase its capital by increasing the par value of shares that were already sold. The Rosalee Co-operative Association Limited had passed the following resolution on March 15, 1917:

> That the author ized capital of the Association is hereby increased from $2,000 to $20,000 by increasing the par value of the Association's 400 shares from $5 to $50.[161]

The Parkside Co-operative Association passed a similar resolution on March 7 1923. The Deputy Attorney-General's opinion was that the by-law was ultra vires because neither the the Agricultural Co-operatives Act nor The Companies Act provided for an increase in the par value of issued share because under The Companies Act, capital could only be increased by issuing new shares and because the Co-operatives Act contained no provision for imposing a liability on a shareholder greater than that which he contracted by his original purchase of shares.

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[159] S.S. 1931 c. 32, s. 4.

[160] [1921] 1 W.W.R. 109 (Sask. C.A.).

[161] February 15, 1924 letter, supra, note 103.

C. Apportionment of Surplus

The 1913 Act set out a scheme for distribution of a co-operative's profits. After provision for a reserve fund and interest on capital the surplus was to be divided among the patrons, whether they were shareholders or not. In 1916 an amendment restricted the division of the surplus to the shareholders unless the supplemental by-laws provided for distribution to patrons and shareholders. The 1916 amendments also permitted a co-operative by supplemental by-law to provide for patronage dividends of non-members to be accumulated by the co-operative until they amounted to the par value of a share in which case a share was to be issued.[171] A further amendment in 1918 increased the interest rate on paid up capital from 6% to 8%.[172] In 1922 the directors were permitted to retain patronage dividends until the unpaid balance of all shares was fully paid up if the supplemental by-laws so provided.[173]

In 1924, the Co-operation and Markets Branch of the Department of Agriculture had to consider several supplemental by-laws that appeared to infringe the policy of the Act. The Wairoa Grain Growers Co-operative Association Limited proposed in a by-law to retain any patronage dividend that was less than 25 cents and to credit the amount to the patron or shareholder who otherwise would have received it. If that individual did not do business with the co-operative for two consecutive years, the amount in that individual's account would be transferred to the association's surplus account with notice to the individual and a right of appeal to the Board. The Deputy Attorney-General's opinion was that the co-operative had no power under the Act to draw benefits between individuals whose volume of business had been large and those whose volume of business had been small. Furthermore, the Act made no provision for the forfeiture of a patronage dividend.[174]

The Lemk Co-operative Association Limited proposed to retain patronage dividends beyond the value of one share until the shareholder owned $800.00 in stock. The Deputy Attorney-General ruled that the co-operative could retain dividends only to

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171 N.Z. Stat. c. 37 s. 8a

172 N.Z. Stat. 36, 37 s. 7

173 March 18th, 1924 letter from Gaskin to Auld [illegible], note 101

174 Id.

the value of one share and that further dividends might be paid each year. The same association had hoped to pay additional dividends in goods but this was precluded.[175]

The Medstead Co-operative Association Limited was incorporated in 1914 and by 1920 had issued 30 shares at a par value of $25.00 with $1.00 paid on each share. At the annual meeting on February 21st 1920 the following resolution was passed:

> That we transfer from reserve account the sum of $2,856.00 and add to shares to be 89 at the rate of $24.00 per share

The Deputy Minister of Agriculture was advised that this transaction was prohibited for two reasons. Firstly the co-operative was subject to the provisions of The Companies Act (except where that Act was inconsistent with the Agricultural Co-operative Associations Act) and a company could not invest in reserves in its own shares. Secondly the Co-operation Act required apportionment of profits on the basis of patronage, and to use the reserve fund in the manner proposed would be a contravention of that principle, since the reserve fund is made up of undistributed profits.[176]

B. The 1928 Act and Amendments in 1939

In a 1928 letter to Keen Waldron recognized the following as differences in the Act: some co-operatives were not operated on a co-operative basis and such operation was not required by the Act; co-operation was practically limited to the "agricultural class" because the Act required 75% of the members to be involved in agriculture and because the term co-operative was abused by private traders. He even went so far as to say that "[r]egulation or lack of it, ... was the reason why associations have failed in Saskatchewan and rather optimistically that "[n]othing will go wrong in future with amended legislation in force and the U.F.C. in touch ... co-operation."[177]

On the question of the legitimacy of some co-operatives or rather of enterprises masquerading as co-operatives, Keen and others recommended careful scrutiny of all applications for incorporation of co-operatives, a practice that was being followed in

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[175] November 10, 1920 letter from Dingwall to Auld, id.

[176] S.S. 1915, c. 37 s. 18.

[177] April 24th, 1928 letter from Waldron to Keen, supra, note 72, Vol. 44, General Correspondence, 1928. C.F. See also January 11th 1928 letter from Ketchum to Waldron, id. Vol. 48, General Correspondence 1929, ff.

Saskatchewan and Manitoba.[176] In a 1927 letter to Weldon, Kerr reiterated that the Co-operative Union wanted to ensure that the Federal and Provincial governments pass legislation "that would end the employment of such words as 'pool' and 'co-operative' by private corporations and individuals."[177]

E. Credit Transactions

When the S.G.G.A. Trading Department was established in 1914 the Act had been amended in one rule the following clause:

> 3(4) The association shall except as hereafter provided pay for all goods purchased upon delivery: Provided that any association may purchase upon credit from any other agricultural co-operative association or any company association or society incorporated by any special Act of the Province of Saskatchewan having objects which by or in part similar to the agricultural co-operative associations.[178]

The result of the amendment was that co-operatives could purchase on credit from the Trading Department of the S.G.G.A. but not from other wholesale suppliers. In the event that a co-operative was unable to meet its indebtedness the S.G.G.A. had a priority over other creditors since the arrangement with the other creditors were ultra vires. This special treatment for the co-operative while benefiting the Trading Department was an irritation to the local co-operative managers and other suppliers. Opposition to the restriction on credit was led by H.W. Kenyon, the manager of the Davidson Co-operative. He believed that the co-operatives should not be placed in a different position than the private traders, since it was difficult to command the support of farmers who were refused credit at the co-operative when credit would greatly benefit them. In September 1921 Kenyon wrote to the Minister of Agriculture to explain the difficulty the Davidson Co-operative was experiencing with some customers. He wrote:

> It is all very well to encourage cash trading and that is an ideal we should strive for. However I have been very strongly opposed to the clause in the Act which makes it impossible for an Association to force collections. In fact I think it is a reflection upon our Provincial Legislature to have any such Act. I do not think the Legislature thought

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176 Circular No. 1 July 31st, 1928 in Vol. 117 Monthly Bulletin 1927-1928.

177 June 1926 - 1926 letter from Kerr to Weldon, in Vol. 46 General Correspondence 1927 A-B.

178 SS 1914, c. 37 s. 3.

encourage people to be crooked but still that is exactly what the Act does. There are some in the Davidson district that were looked upon as honest and had traded with the Association and paid their bills. It was not generally known in the early years that the books were not collectable. Later on as we grew in strength those opposed to our movement carried on a good deal of propaganda with our patrons advising that they did not have to pay their bills. A local lawyer was quite active in this. We have accounts on our books that would have been paid long ago had we been in a position to sue. As it stands a man can stand up and say "yes, I bought goods from the Co-op, but they can not collect it and I am not going to pay." The Legislature says "yes, you need not pay if you do not wish to do so as we have passed legislation protecting just such guys as you. [163]

A resolution of the co-operative managers at their annual conference in 1927 called for the abolition of all restrictions on credit transactions.[164] The Co-operative Union of Canada supported the position of the managers.[165]

However the S.G.G.A. had amalgamated in 1926 with the United Farmers of Canada (U.F.C.) to form the United Farmers of Canada (Saskatchewan Section) and that body had taken over the trading operations of the S.G.G.A. A meeting was held in Regina on December 16, 1927 to consider amendments to the Act. Five representatives of the U.F.C. Saskatchewan Section attended, including their legal adviser W.B. Francis, four government representatives and one representative from the local co-operatives.[166] The result was that the U.F.C. position prevailed and an amendment was made to the Act concerning credit transactions.

7. THE 1926 ACT - RESTRICTION TO AGRICULTURE REMOVED

During the 1920s the Saskatchewan economy prospered, and cities and towns expanded. By 1928, it was generally believed that the benefits of co-operation should be extended to urban residents. The Executive of the Co-operative Trading Association passed a resolution reflecting this belief. The resolution said that the Act should be amended "in such a manner that any community co-operative in Saskatchewan might be

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163. September 8th, 1927 letter from Weisinger to Hamilton, Saskatchewan Archives, Call No. M3, File No. 30 (1926-9) W-Z, volume, page 109.

164. August 26th 1927 Letter from Baker to Hamilton, id.

165. August 26th 1927 Letter from Hamilton to Auld, id.

166. Amendments to the Agricultural Co-operative Association Act, Undated, id.

allowed any powers under the Act.[185] The title of the Act was changed in 1925 to be simply The Co-operative Associations Act,[186] the requirement that 75% of the members be agriculturalists was repealed and all references to farmers or agriculture in the Act were removed.[187]

A. Apportionment of Surplus

A "patron" previously undefined in the Act, was defined as a person who purchased more than $50 worth of merchandise from an association in any one year.[188] The apportionment of surplus section was amended to provide that, after ten per cent of profits were set aside for the reserve fund and six percent interest was paid on paid up capital stock the remaining surplus be divided among the patrons in proportion to their patronage.[189] The result of this amendment was that a customer whether a shareholder or not, would not receive a patronage dividend if he spent less than $50 in the co-operative in that year.

A new section was introduced which permitted co-operatives to provide by supplemental by-law that no interest be paid on shares. Upon such a by-law being approved by the Registrar the co-operative was required to redeem upon the demand by a shareholder holding more than one share, or repurchase for cash all shares in excess of one held by that shareholder.[190]

In 1931 section 25 was further amended to allow the association to pass supplemental by-laws to permit patronage dividends to be retained in either a share or loan capital account (carrying interest at 6%), and provision in the share capital account to be applied to the purchase of additional shares. A shareholder could withdraw any amounts in a loan capital account after giving ninety days notice.[191]

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185 Letter date, 1913 letter from Waldron to The Secretary re co-operative trading Association letter, vol 71 No 84, General Correspondence, 1905, A-Z The Executive member included Matchett and Waldron.

186 S.S. 1913, c. 34.

187 Id.

188 Id. c. 2 (f)

189 Id. s. 24 (3)

190 S.S. 1928-29 c. 46, s. 3

191 Id. s. 25.

Also in 1931, the definition of "patron" was altered to be a non shareholder purchasing over $50 worth of merchandise in the year. Patronage dividends were to be divided among "patrons and shareholders."[193] Thus, shareholders would receive a dividend even if their annual purchases amounted to less than $50.

A further amendment in 1935 permitted the members to provide by supplementary by law that different commodities should have different scales of dividends, and that the directors could declare that no dividend would be paid on certain commodities.[194] This provision was further amended in 1936 to permit a higher scale of dividends to be paid to shareholders than to patrons. It also provided that where dividends due to a non shareholder patron had been retained for three years and had not accumulated to an amount equal to the par value of one share the patron would be offered an opportunity to claim the amount; if the dividends were not claimed, they would become the property of the association.[195]

Kerr also often responded to requests from Saskatchewan government officials for information about possible federal legislation.[196] When Saskatchewan was considering the introduction of co-operative credit society legislation, Waldron approached Kerr for his assistance.[197] For example, in 1932 Waldron intimated to Kerr that the Saskatchewan government wanted all applications for registration under the co-operatives legislation to be submitted to Kerr prior to incorporation.[198]

Kerr did some say in policy matters as well. In 1932 Finlayson was interested in Kerr's views on the desirability of amending the Co-operative Marketing Associations Act[199] to allow co-operative marketing associations to accept proxies from non members. Finlayson thought that such a provision would offset the members of the co-

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193 S.S. xxx, c. xx

194 S.S. 1934-35, c. xx, s. x

195 S.S. 1936, c. xx Ken November 12th 1931 letter from Jamieson to Kerr and November 16th 1931 letter Kerr Kerr to Jamieson on this point, supra, note 73, Vol. 88, General Correspondence, 1931, A-G. They were both of the view that government intervention in the affairs of co-operatives should be as little as possible, and that, subject to some minimum standards, the membership should make its own decisions over such matters.

196 September 4th, 1928 letter from Waldron to Kerr id.

197 October 9th 1928 letter from Waldron to Kerr id.

198 September 6th, 1928 letter from Waldron to Kerr, id., Vol. 88 General Correspondence, 1928, A-G

199 S.S.S. 1928, c. 144.

operative.[298] Keen's response was ambivalent. He saw both benefits and detriments to the proposal. He thought that efforts should be made to bring new members into co-operatives "as true co-operators" However being in favour of stable legislation he considered it unwise to experiment with amendments to the Act. He also thought that the amendment could be open to abuse.[299] Finlayson agreed on this last point and considered it unlikely that the amendment would be passed.[300]

Another issue arose at this time. Aronson instructed Keen for his views on whether retail merchants should be eligible for membership in retail co-operatives.[301] The question was posed in terms of whether this would make the co-operative a wholesale.[302] Keen did not think that co-operative legislation allowed retail merchants to be members of co-operatives, in addition he considered allowing such membership unwise and probably against co-operative principles.[303] Aronson and Keen also discussed disciplinary authority over co-operatives acting in violation of the law.[304]

In the same year Aronson asked Keen for his opinion on the creation of a special commodity dividend for co-operatives. Keen asserted that government interference in such matters should be minimal, and if any case, that a general dividend was preferable.[305]

Aronson advised Keen of changes to the Co-operative Associations Act, made on January 7th, 933 whereby a co-operative's supplementary by laws could prevail the the

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298 January 30th, 1933 letter from Finlayson to Keen [illegible] note 71 Vol 36 General Correspondence, 1931 A-C

299 February 2nd, 1933 letter from Keen to Finlayson id., Vol 36, General Correspondence, 1931 A-C.

300 February 9th, 1933 letter from Finlayson to Keen. id., Vol 36, General Correspondence, 1931, A-C

301 June 2nd, 1933 letter from Aronson to Keen id., Vol 36, General Correspondence, 1931 A-C

302 This was the view of the Attorney-General's Department and one with which Keen agreed see note 301. 1932 letter from Aronson to Kemp, and June 7th, 1932 letter from Keen to Aronson, id., Vol 36, General Correspondence, 1931 A-C.

303 June 7th, 1932 letter from Keen to Aronson, id., Vol. 36, General Correspondence, 1931 A. C. The rationale would be based on the view that a retail co-operative is an association of persons the main purpose of which benefit members to themselves. Membership by a merchant for the purpose of supplying his or her store, would make the co-operative an agent for profit-motivated distribution of goods to third parties (who might otherwise deal with the co-operative). [illegible] am grateful to Dr. Scott Fairbairn (Centre for the Study of Co-operatives and the Department of History University of Saskatchewan) for pointing this out to me.

304 id.

305 November 10th 1932 letter from Aronson to Kemp, and November 12th, 1932 letter from Keen to Aronson, id.

co-operative could cease paying interest on share capital. He also indicated that Keen's comments on other supplemental by-law provisions would receive consideration.[207] In preparing for the introduction of co-operative credit legislation, Arneson was interested in Keen's comments on the Alberta, Nova Scotia, Ontario and Manitoba Acts.[208] Keen provided an extensive commentary on the Alberta Act together with information on the Manitoba, Nova Scotia, Ontario and Quebec Acts.[209] In 1934 Arneson advised Keen that amendments to the Co-operative Associations Act recommended by the CUC would be considered once the Legislature met.[210] In late 1934 Arneson again requested comments from Keen on proposed changes to the Act; these parties in charge were proposed by the Commons Reformers Co-operative Association Ltd.[211]

Keen made suggestions for amendments to the Co-operative Associations Act in late 1934, but unfortunately they were received too late. However some of his suggestions were included in the amendments as drafted. Keen also suggested that the Act be amended to permit the incorporation of co-operatives without share capital, a proposal that was of interest to Arneson.[212] Keen also reviewed and commented on the Standard By-laws at the request of Arneson.[213]

B. Other Amendments

In 1935 the incorporation procedure was amended to give the registrar discretion as to whether to incorporate a co-operative. The words "if he approves of incorporation" were added to the subsection requiring the registrar to endorse the memorandum of association.[214] In the same year another amendment gave a co-operative the power to substitute its own by-laws for the otherwise mandatory standard by-laws, if the proposed by-laws were not inconsistent with the Act were approved by two-thirds of the shareholders at an annual meeting or a special meeting called for the purpose and

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207 January 7th, 1930 letter from Arneson to Keen, id. Vol. 68, General Correspondence, 1930, A-G

208 December 5th, 1930 letter from Arneson to Keen, id., Vol. 68, General Correspondence 1930 A-H.

209 December 11th, 1930 letter from Keen to Arneson, id. Vol. 68, General Correspondence, 1930, A-H.

210 April 18, 1934 letter from Arneson to Keen id., Vol. 68, General Correspondence, 1930

211 November 5th, 1934 letter from Keen to Arneson id. Vol. 68, General Correspondence, 1930

212 January 10th, 1935 letter from Arneson to Keen, id., Vol. 70, General Correspondence, 1930, G-I

213 Arneson 30th, 1930 letter from Keen to Arneson, id.

214 S.S. 1934-35, 35, 8

were also approved by the Lieutenant Governor-in-Council.[114] This amendment was repealed in the following year.[115]

C Other Developments 1928–1939

In 1929 the U.F.C.'s Trading Department was the nucleus of a new wholesale organization, the Saskatchewan Co-operative Wholesale Society which was incorporated by a special Act of the Legislature.[117] H.W. Ketcheson, manager of the Davidson Co-operative became the manager of the wholesale.[118]

The Depression of the 1930's began on October 29, 1929 with the Wall Street crash and had a devastating effect on the prairies in the following decade. The early 1930's brought severe drought, strong winds that blew away the soil and a grasshopper plague. Wheat prices dropped to record lows and most farmers were in serious financial difficulty. The hardships stimulated an interest in co-operative development, and particularly after 1934 many new local co-operatives were organized by wheat pool fieldmen travelling from community to community.

In 1929 trade unionists and workers, primarily in the urban centres organized the Independent Labour Party of Saskatchewan; it formed a coalition known as the Farmer-Labour Group with the U.F.C. (Saskatchewan Section). The Group unsuccessfully contested the 1930 federal election. In 1932, the Co-operative Commonwealth Federation (C.C.F.) was formed in Calgary and held its first annual convention in Regina in July 1933. The Farmer-Labour Group joined the C.C.F. in 1935 and contested the federal election, winning two seats after which the U.F.C. (Saskatchewan Section) terminated its political involvement.[119]

The Co-operation and Markets Branch of the Department of Agriculture played a major role in co-operative development in the 1930's under the leadership of the Commissioner, B.N. Arneson. In 1936 Arneson was charged with preparing credit union

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[114] Id., s. 5.

[115] S.S. 1936, c. 53, c. 4.

[117] Lewis, note 88 at 167.

[118] I MacPherson, Each for All, Toronto: Macmillan & Collaton University, 1979, at 134.

[119] Lewis, note 87 at 167–68, 174, 206, 168 and 161.

legislation and welcomed Keen's input. The Act was to be based on the Nova Scotia and Prince Edward Island Acts.[309] Keen advised an adoption of the Nova Scotia Act.[310]

In 1937 the Saskatchewan government was considering amending the Co-operative Marketing Associations Act to provide for membership in a marketing co-operative on a patronage basis. This would permit co-operatives to decide the individual capital investment could be based on the volume of business done with the co-operative. There was concern about the potential confusion among the terms "members" "shareholders" and "patrons". Keen foresaw problems with putting the amendment into practice because of fluctuating volumes of an individual's purchases; he also foresaw problems with members with large families. He thought the solution was to encourage the investment of the capital funds of each member of the co-operative at a reasonable rate of interest.[311]

In 1937 and 1938 concerns arose over the interpretation given by the tax commissioners to "member" in the Dominion Income Tax Act. Aronson was impressed with any progress which CUC had made with the commissioners.[312] Keen though that members must be admitted as members of the co-operative, while shareholders were those who had been allocated a share. The mere fact of customers receiving a patronage rebate be upheld, would not make them shareholders.[313]

In early 1938 a committee consisting of W E Francis, Harry Fowler and Aronson was established to consider revisions of the Co-operative Associations Act. The committee wished to meet with Keen, and in particular to discuss means of dealing with members whose actions are injurious to a co-operative.[314] Keen agreed to meet with the committee and sent a copy of an Ontario by-law on the sub ect. He thought that the mere inclusion of a power to expel members would constitute a sufficient deterrent on errant members. He also felt that expulsion of members should not be left to a meeting of members. He preferred that this matter be left to the directors.[315]

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[309] November 30th, 1936 letter from Aronson to Keen, same file, Vol. 79, General Correspondence, 1936, A-K.

[310] December 1st, 1936 letter from Keen to Aronson, Id.

[311] Keen also commented on the other proposed amendments. See October 20th, 1937 and December 6th, 1937 letters from Keen to Aronson, Id.

[312] March 2nd, 1938 letter from Aronson to Keen, Id., Vol. 80 General Correspondence, 1938 H-R

[313] March 7th, 1938 letter from Keen to Aronson, Id.

[314] May 13th, 1938 letter from Aronson to Keen, Id.

[315] May 18th, 1938 letter from Keen to Aronson, Id.

Interest had been shown in a students' co-operative residence at the University of Saskatchewan. Registration of such an association would be possible once proposed revisions to the Co-operative Associations Act were passed permitting membership of minors in co-operatives.[197]

A question arose as to whether community halls organized as co-operatives might were exempt from income tax. Keen's response to Aronson indicated that while the Income Tax Act did not allow for such exemption it could be engineered if the Saskatchewan Co-operative Associations Act was amended to allow for the incorporation of co-operatives without share capital. Then community halls could incorporate under the Act and benefit from the tax exemption under the Dominion Act.[198]

A December 29th, 1921 letter from Keen to Ketcheson indicates that the Union had just won an income tax battle for co-operatives.[199] Part of the argument Keen used to get the support of the Saskatchewan government for the Co-operative Union of Canada was that it could if it were better financed, fight and win more battles with the Commissioners of Taxation.[200] Taxation of co-operatives was an important concern for Keen and for co-operatives generally and it appears that Keen's and the CUC's efforts in that regard were very beneficial to co-operatives throughout Canada.[201] Of course they did not win all battles with the Commissioners of Taxation. In 1922 for instance, an unfavourable ruling regarding the taxation of surplus carried over to reserve or to the following year's accounts was handed down.[202]

Two provisions of the 1939 Act were in direct response to discussions with income tax officials. They were a provision permitting the incorporation of co-operatives

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197 November 30th, 1920 letter from Aronson to Keen, Id.

198 December 15th, 1920 letter from Aronson to Keen, December 20th, 1920 letter from Keen to Aronson, Id.

199 Id. Vol 36 General Correspondence, 1921, A-J.

200 October 22nd, 1920 letter from Keen to Waldron, Id., Vol. 35 General Correspondence, 1920, A-J. It appears from Keen correspondence that the Saskatchewan government was quite useful to the Union in terms of educational and lobbying assistance. Premier Premier Walter Scott encouraged Saskatchewan co-operators to meet Keen when he visited the Province and encouraged co-operatives to affiliate with the Co-operative Union of Canada.

201 See, e.g., March 2nd, 1920 letter from Aronson to Keen, March 7th, 1920 letter from Keen to Aronson, Id., Vol 35, General Correspondence, 1920 A-H.

202 October 22nd, 1921 letter from Keen to the Young Grain Growers Association Ltd. Id., Vol. 207 Taxation, 1919-34.

without share capital and a change dealing with the apportionment of surplus.[339] Keen pointed out the dangers of relying on the views of local taxation officials in amending the statute without obtaining a ruling from Ottawa.[340] This advice was followed and the amendments was passed. As a result community halls organized on a co-operative basis were exempt from taxation.[341]

Beginning in 1934 an annual Conference of Co-operative Trading Associations was organized to stimulate communication between co-operators, and in 1937 the first of many Co-operative Schools was organized at the University of Saskatchewan at Saskatoon.[342]

B. THE 1939 ACT

In 1938 the Co-operation and Markets Branch undertook a major study of the performance of co-operatives in the province for the period 1914-1938.[343] Following the study a new Co-operation Act was enacted.

The new Act redefined very broadly the objects for which an association may be incorporated.[344] The Act replaced the term "shareholder" with the term "member" and defined a member as a shareholder or in the case of an association without share capital, as a person who had complied with the by-laws of the association governing admission.[345] For the first time it was possible to operate a co-operative on a membership fee basis. Applications for membership were subject to approval by the board of directors,[346] and memberships were transferable only with the approval of the board.[347]

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339 February 6th, 1939 letter from Atkinson to Keen Id., Vol. 46, General Correspondence, 1939, C-G.

340 February 13th, 1939 letter from Keen to Atkinson, Id.

341 April 21st 1939 letter from Atkinson to Keen Id.

342 Hamm, notes 87 at 161 and 162.

343 Co-operative Marketing Associations in the Province of Saskatchewan, Department of Agriculture Special No. 46 [2 parts] Regina, [1939]

344 S.S. 1939, c. 88, s. 5-7

345 Id. s. 2 (3).

346 Id. s. 17 (3)

347 Id. s. 18.

A procedure to expel members was introduced and is still in effect). The directors could order the expulsion of a member by a two thirds vote at a properly called meeting (provision was made for repayment of shares). The member was entitled to appeal the order at the next general meeting where a majority of the members present could confirm or rescind the order.[343] It was not specifically stated in the Act that the member was entitled to be heard at the directors meeting. However in the Supreme Court of Canada case of Maguire v Société Coopérative Agricole de Ste. Rosalie, Abbott J. stated that, since the Board was acting in a quasi-judicial capacity the member was entitled to be heard.[344] The case might be distinguished on the basis that there was no appeal to the general membership and therefore the Board's decision was final. With the changing attitude of the Supreme Court to the principles of audi alteram partem in recent years, and with the influence of the Charter of Rights and Freedoms, it is likely that a court would hold that the member had a right to be heard at both the directors and the general meeting. The Manitoba statute so provides.[345]

In the 1939 Act, the provision for the apportionment of surplus required the directors, after setting as 6% or 6% per cent of the surplus for a reserve fund, and paying interest on paid-up capital, to set aside "not more than ten per cent of the surplus to an educational or community fund."[346] This was the first time that the Rochdale principle of perpetuating the co-operative philosophy through educational work[347] was embodied in a Saskatchewan co-operative statute.

At various times prior to the passage of the 1939 Act, Keen and Watkins had discussed the co-operative principle of education. The need to disseminate information about the activities of the various co-operatives in Canada was well-recognized. co-operatives could learn a great deal from each others' successes and failures.[347] Even at the early stages of development in Canada there were concerns about the inadequate attention directors and managers of co-operatives paid to education and to the need for

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343 Id., s.

344 [1944] S.C.R. 284.

345 R.S.M. 1970, c. 60 s. 208.

346 R.S. 1939 c. 60 s. 93

347 cf. Jon Thy Law of Canadian Co-operatives, Toronto, Butterworths, 1981, pt. 8

347 See, e.g., February 1940, 1939 letter from Keen to Watkins, supra, note 72, Vol. 30, General Correspondence, 1939, A-H.

education funds.[348] Keen pointed out that it "seems almost impossible to get societies to see that money spent in co-operative education is not only money well spent but absolutely imperative for the welfare of the movement."[349] On a more fundamental point, Keen also voiced concerns about the "lack of a sense of responsibility and of appreciation of our principles by the directors" and about managers who know nothing of and [are] not interested in co-operative philosophy from which all permanent economic success arises."[350]

The new Act provided that the association could be dissolved by a three-fourths vote of the members at any duly constituted meeting called for the purpose of considering the resolution.[351] Presumably this meant a three-fourths vote of the members actually attending the meeting. This provision replaced the requirement that three-fourths of the shareholders living within 35 miles of the head office sign the resolution.

The Co-operation and Markets Branch conducted a thorough study of the effect of consumer credit on the co-operatives[352] but no significant amendment was made to the credit provisions of the Act.

9 AMENDMENTS TO THE STANDARD BY LAWS BETWEEN 1914 AND 1950

The Standard By laws, drafted in 1914 were amended in 1927, 1937, 1939 and 1942. It has not been possible to determine the particular circumstances which led to these amendments and it is probable that any documents concerning these amendments have now been lost.

However there are a few exceptions including two letters from Keen to Armann containing detailed comments on the Standard By-laws.[353] He questioned the need for annual meetings of all co-operatives to be held in January of each year. He also noted

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348 July 16th, 1940 letter from Keen to Muldrew, Id.

349 July 26th, 1940 letter from Keen to Muldrew, Id.

350 March 20th, 1942 letter note Keen to Booth, Vol. 38, Id., General Correspondence, 1939 A-Z. These exact same issues continue to be raised in 1980.

351 S.S. 1940, c. 66, s. 62.

352 Keen, note 348, Page 9.

353 October 20th, 1939 letter note Keen to Armann, supra, note 78, Vol. 37, General Correspondence, 1939. See also September 26th, and 29th, 1939 letters from Keen to Armann, Id., Vol. 38, General Correspondence, 1939 A-Z.

in giving notice of meetings to members directly and in a local newspaper and the prohibition against a member being an auditor of a co-operative. Keen seemed to have envisaged directors overseeing the operations and management of co-operatives in some detail for he considered it desirable for boards to comprise many committees (including grocery, drygoods and hardware committees). As a consequence, he was in favour of boards of directors being comprised of at least six members and not more than twelve. He thought that there should be a minimum patronage requirement for a big bully for election to the board of directors and that it was worthwhile to consider disqualifying directors who were in arrears with payments to the co-operative. He thought that disloyalty by a director, defined as including doing business with a competitor of the co-operative when it could have been carried out with the co-operative, should be grounds for disqualification. Keen also thought that it might be desirable to take the drastic step of denying voting right to members who made purchases below a fixed amount per annum. He raised the issue of the appointment of auditors, chairmen and secretaries' duties and the quorum at meetings. While these comments cannot be treated as agreed to by all co-operators they are issues that were raised by an influential co-operator. As such, they illustrate some of the concerns that gave rise to changes in the by-laws over time.

Keen considered that a vacancy on the board of directors should be filled by the unsuccessful candidate with the most votes at the last annual meeting at which there was a directors' election with that person holding office until the next annual meeting. He saw this as preferable to the board arbitrarily filling the vacancy.

Other background to changes to the Standard By-laws included later correspondence among Aronson, Keen, Fowle, Francis and McCaig.[354] This dealt with such matters as the first general meeting of a co-operative, deferral of annual meetings, members' equal standing, meetings, quorum at meetings, nomination of candidates for the board of directors, number and removal of directors, bonding of officers, meeting credentials, retirement of members, minority reserves, the election of auditors and the powers of the Registrar.

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[354] February 3rd 1941, August 4th, 1941 and April 1st, 1942 letters from Aronson to Keen, February 11th, 1941, September 9th, 1941 and October 4th, 1942 letters from Keen to Aronson; May 14th, 1941 letter from Francis to Aronson; June 2nd, 1942 letter from Fowler to Aronson, May 20th, 1941 letter from McCaig (President, Saskatchewan Co-operative Wholesale Ltd.) to Aronson, in Vol 101, General Correspondence, 1941 C-I; Vol 100, General Correspondence, 1940, A-C; Vol. 100, General Correspondence 1940, A-C.

In 1927 Article VIII of the Standard By-laws was amended by inclusion of a section entitled 'Advice'.[304] It was suggested that every association should pass by-laws dealing with the following matters:

> (1) Regulating the manner in which calls may be made on the unpaid portion of shares, and providing penalties for nonpayment of such calls.
>
> (2) Providing how patronage dividends shall be paid to nonshareholder persons, e.g. whether paid in cash or credited on account for capital stock.
>
> (3) Providing such rules as may be required for the regulation of the business of the association and defining any special duties which may be assigned to any officer or servant of the association.

These administrative matters add probably caused problems for some associations. The advice section also included a set of suggested supplementary by-laws and an offer by the Registrar to provide to any proposed association, free of charge, a set of suitable by-laws, on being informed in detail of the object of the proposed association's business.

The provisions concerning meetings were amended in 1937,[305] 1938[306] and 1942.[307] Prior to 1937 only annual and special meetings were provided for, but in that year the following section was added under Article 8:

> 3. Other General Meetings. In addition to the annual meeting, a general meeting of the association may be held quarterly, half yearly or at such other time and at such hour and place as may be determined by the directors.

In 1939, a section was added stating that the association could hold a semi-annual meeting in June or July "for the purpose of reviewing the financial year, its progress and problems or any business of the association."

Clearly the intention of these amendments was to stimulate greater member involvement in co-operatives' business affairs. However the evidence that any

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304 Standard By-laws Governing Agricultural Co-operative Associations, Saskatchewan Gazette (1927) Order in Council dated June 30th, 1927 Article VIII

305 Standard By-laws approved by O.C. 2301/37 on March 8th, 1937 Saskatchewan Gazette, (1937).

306 Standard By-laws approved by O.C. 3187/38 on September 14th, 1938 Saskatchewan Gazette, (1938)

307 Standard By-laws approved by O.C. 1001/42 on June 1st, 1942 Saskatchewan Gazette, (1942).

membership meeting was reduced in 1937 from one fifth of the members to one tenth of the members living within twenty miles of the head office. In 1939 this was changed to ten members or one tenth of the number of members, whichever was less.

In 1939 more comprehensive provisions were made concerning procedures and duties of the board of directors. Provision was also made for an executive committee of the directors and for special committees to perform special duties. Of particular interest was a new section concerning membership administration.

> 7 The directors shall keep the members informed regarding the business of the association and encourage interest, discussion and support on the part of the members. The directors shall develop and foster a sense of ownership and responsibility on the part of the membership by the following
>
> 1. By presentation of periodic reports regarding the conditions of the business, the operation of various business policies, by publicizing the activities of the association in the local press and in other ways;
>
> 2. By arrangement of business and educational meetings of the association as frequently as conditions warrant;
>
> 3. By maintaining direct and personal contact with members to explain the business and program of the association and solicit their support;
>
> 4. By encouraging active participation in the affairs of the association at meetings and by the appointment of special committees of the members where feasible and publicizing the activities of such committees;
>
> 5 By encouraging the organization of study and discussion groups regarding the principles and practices of co-operation and dissemination of co-operative literature;
>
> 6 By identifying with, and lending the support of the association to, the social educational and economic problems and affairs of the community to the extent but that does not interfere with the main objects for which the association is organized

7 By affiliation with, or the support of other co-operative associations to foster the development of the co-operative movement.

This section had two effects: it clearly set out the duties of a co-operative director and it also imposed upon the board a statutory obligation to perform those duties. At common law a director is expected to demonstrate the degree of skill that may reasonably be expected from a person of his or her knowledge and experience. The purpose of the section was to raise the standard of performance of boards of directors, by including specific provisions in the model by-laws. It could be argued that the directors were made aware of their precise duties and that the common law standard of performance was thereby raised. Clearly provincial officials hoped to improve directors' performance and thereby increase members' involvement in their co-operatives.

In 1941 Aronson and Keen discussed an amendment to the Co-operative Associations Act that would allow co-operatives to adopt a "revolving door plan" of financing. The committee felt that this had already been provided for in the new Act. Keen felt that the wording of section 35 of the new Act "will not to the provisions of the by-laws" did not give the co-operative power to vary the terms of the Act. He did feel that Aronson's argument that section 19 allowed for the adoption of the revolving door plan for financing was stronger because of the words "notwithstanding anything in the Act contained". He considered it odd however that a co-operative could pass a valid by-law which would conflict with the specific requirements of the Act.[359] According to Francis, changes in the Standard By-laws were proposed in 1941 mainly to improve clarity and consistency.[360] McCaig showed particular interest in provisions regarding the nomination of directors and control over their conduct.[361] The revisions to the Standard By-laws also gave considerable latitude to co-operatives on the subject of holding their annual meeting and to new co-operatives regarding holding their first general meeting.[362] Keen was concerned that the Standard By-laws were becoming too lengthy and too rigid having the effect of placing co-operatives in a strait jacket. He

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359 February 8th, 1941 letter from Aronson to Keen, February 11th, 1941 letter from Keen to Aronson, respectively Vol. 168 General Correspondence, 1941 C.C.

360 May 14th, 1941 letter from W.H. Francis, id.

361 May 21th, 1941 letter from J. McCaig, Saskatchewan Co-operative Wholesale Society Ltd. id. Foster considered that a good job had been done in the revision.

362 August 8th, 1941 letter from Aronson to Keen, id.

felt that as much latitude as is reasonably justifiable should be given to individual co-operatives.[348]

In 1942 Keen was concerned about the supplementary by-law regarding retirement of members. He thought it was ultra vires the Act. Aronson was impressed by Keen's reasons and asked for his comments on the statutory reserve.[349] This latter point continued to be of interest into 1943. Aronson thought that alienation of the statutory reserve should not be encouraged.[350]

10. AMENDMENTS TO THE CO-OPERATIVE ASSOCIATIONS ACT 1944-1950

In June 1944, a C.C.F. government was elected in Saskatchewan with a large majority and a stated enthusiasm for co-operative development. T.C. Douglas became Premier and L.F. Malanchuk was the first minister of the new Department of Co-operation and Co-operative Development.[351] Douglas formed an economic advisory committee chaired by O.E. Brimsmead, and an Economic Advisory and Planning Board with George W. Cadbury, a British economist and member of the British Labour party, as its chair. Cadbury advised the Cabinet on economic and co-operative development.[352]

The new C.C.F. government did not immediately make major amendments to co-operative legislation. In the first session of the legislature in the fall of 1944, only a very minor enhancement to the Act was made[353] following correspondence between the Registrar, the Deputy Attorney-General, W.H. Francis and others.[354]

In 1944 the question of receiving patronage dividends was much debated. Aronson and Keen discussed a co-operative receiving a member's patronage dividends and placing them to the member's credit in a share capital account until it amounted to the value of a share and then issuing a share to that member. Aronson was concerned about the desirability of such a provision and even about whether it would be authorized by the

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348 September 8th, 1941, letter from Keen to Aronson, id.

349 April 1st, 1942 letter from Aronson to Keen, id., Vol. 301 General Correspondence, 1941 A-C.

350 October 4th, 1943 letter from Aronson to Keen, id., Vol. 301 General Correspondence, 1941 A-C.

351 John H. Archer, Saskatchewan: A History, Western Producer Prairie Books, Saskatoon, 1980, at 391.

352 Id., at 391.

353 S.S. 1944 (2nd Session) c. 44.

354 October 20th, 1944 letter from Hjalmarson to Malanchuk, supra, note 347.

Standard By-laws.[370] Keen thought that crediting of patronage dividends would be permissible under the by-laws existing at the time, although he doubted the legality of issuing of share capital in a manner not in accordance with usual practice. In terms of co-operative practice Keen thought it unwise to encourage a policy whereby people were recognized as members when they had not specifically sought membership.[371]

It would appear that Keen viewed legislative activity of the provincial and federal legislatures as potentially damaging. In other words he had no illusions about the attitude of governments towards co-operatives. In one graphic example, he asked all members of the CUC to keep track of legislative developments in their provinces and asked them to "bring to our notice legislation calculated prejudicially to affect the interests of co-operative societies when such is being introduced."[372] For example, it was not until amendments were made to Saskatchewan's Pharmacy Act in 1946 that co-operatives had the right to operate pharmacies.[373] Keen was quick to point out the positive effects of the CUC's interventions. For example he took the credit for warding off changes in the Criminal Code which would have "prohibited the payment of purchase dividends by co-operative societies in Canada."[374]

In 1946 a number of minor amendments were made. Their general thrust was to make the directors previously absolute discretion to decide certain matters subject to "such conditions as may be set forth in the by-laws."[375] The maximum interest payable on loan or share capital was reduced from 6% to 5% (and remained at that level until 1961).[376] Also the maximum percentage of the surplus to be set aside for an educational or community fund was reduced from ten to five percent.[377]

In 1947 more extensive and important amendments were made to the Act. The Registrar was given personal authority to decide in any particular instance whether the

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370 December 27th, 1944 letter from Ahearn to Keen, supra, note 73, Vol. 136, General Correspondence, 1944, E-K.

371 January 4th, 1945 letter from Keen to Ahearn, Id., Vol. 121, General Correspondence 1945 A - B

372 Circular No. 3, March 31, 1945, Id., Vol. 217 Monthly Bulletins, 1941-45

373 Koch, Evangelin Thorsteinsson 1000 Co-ops Friends Please, Swing Marshmallow, June 1st, 1960, at 10

374 Circular No. 3, 1945 supra, note 372.

375 S.S. 1946, c. 69 ss. 8, 9, 10

376 Id., s. 8

377 Id., s. 9

incorporation of a co-operative was unnecessary advisable or one was feasible.[371] Co-operatives were permitted to pass supplemental by-laws which were not consistent with the standard bylaws, provided they were approved by the Registrar.[372] This measure was passed a recognition of the steady membership and extent of co-operatives' operations in the province.[373]

In 1946 a community association dissolved and the shareholders wished to divide the assets, now valued at $2,500 amongst themselves. The Act did not permit any part of the surplus to be paid to shareholders as interest or dividends, but provided nothing clearly into the method for disposing of a surplus at dissolution.[374] At the suggestion of Mr Blackwood the Deputy Attorney-General, the legislature amended the Act to provide that the surplus or dissolution of a community association 'shall be used for the purpose of providing services for social welfare, health civic improvement, education or for other objects of a benevolent or charitable nature'.[375] The restrictions on credit transactions were reduced slightly by a provision that, where an association had paid up capital over $5,000, the members could pass a special resolution, supported by three-quarters of the members present at an annual or a special meeting, to permit sales on credit.[376] Previously the resolution required the signatures of two-thirds of the shareholders living within a 20 miles of the head office.[377] The Registrar was aware that many associations were conducting credit transactions without legal authority and so hoped to legitimize these transactions by passing suitable supplementary by laws.[378] The provision establishing an educational or community fund, first passed in 1939 was repealed.[379] The Registrar suggested that such expenses should be paid out of the

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[371] S.S. 1944 c. 72, s. 3

[372] Id., s. 7

[373] June 1944, 1947 letter from the Registrar to Secretaries of co-operative associations, Saskatchewan Archives, Call No. R0, File 30(g) supra note 189

[374] October 1945 1946 letter from Blackwood to Amason, Id.

[375] S.S. 1947 c. 72, s. 3

[376] Id., s. 9.

[377] S.S. 1939, c. 65, s. 34.

[378] Ibidem, note 367, at 3

[379] S.S. 1947 c. 72, s.10.

members's operating expenses rather than out of its surplus.[297] Following the amendment no minimum or maximum amount was required to be spent on member education or community work.

In 1945, only minor amendments were made to the Act.[298] In 1949 amendments were passed concerning the conversion remaining patronage dividends to share capital. One such amendment stated that, where the supplementary by-laws required the purchase of additional shares from patronage dividends not there could be issued to the spouse of the member on the written request of that member and the spouse then became a member.[299] Thus it became possible for a spouse to become a member against his or her wishes. Also, in 1949 provision was made for the amalgamation of co-operatives.[300]

II THE CO-OPERATIVE ASSOCIATIONS ACT 1950

In 1949 and 1950, a major revision of the Co-operative Associations Act was undertaken. The Registrar prepared a draft of the proposed new Act that a committee of the Co-operative Union of Saskatchewan revised. The committee sent the revised draft to co-operative leaders and other government officials for further comment. George Cathery of the Economic Advisory and Planning Board,[301] E F Schaff the editor of The Co-operative Consumer[302] and Mrs. T.J. Hartley[303] all made a number of suggestions.

The revised Act was much longer than previous Acts because it was intended to fulfill three distinct purposes. Firstly it was intended to be a comprehensive statement of the law as it affected co-operatives. The Registrar wished to avoid reliance on The Companies Act as much as possible. Secondly the Act was intended as a guide to

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297 Supra, note 288 at 8.

298 S.S. 1945, c. 97

299 Id.

300 Id., c. 7

301 Memorandum dated, 1949 letter from Cathery to Douglas, Saskatchewan Archives, T.C. Douglas collection, Call No. R-50.1 File 91 supra note 288

302 January 30th, 1950 letter from Schaff to Williams, Saskatchewan Archives Call No. 50. File 29(c). Id.

303 Supra, note 288. February 6th, 1950 letter from Hartley to Douglas Id. See also Recommendations of C.U.S. December 8 1949 Id.

handbook for the 967 associations then incorporated. The style was brief and did not deal with new types of co-operatives that were emerging [304]

The new Act provided a definition of 'co-operative basis' for the first time:

> 2(4). "Co-operative basis" means the carrying on of an enterprise organized, operated and administered in accordance with the following principles and methods:
>
> (a) each shareholder or delegate one vote;
>
> (b) no voting by proxy;
>
> (c) race, creed or political beliefs no bar to membership;
>
> (d) services primarily for members;
>
> (e) interest on share capital not to exceed five per cent per annum;
>
> (f) services to members and patrons at nearly as possible at cost, in that:
>
> (i) savings in purchases arising from yearly operations are paid to members or members and patrons in proportion to patronage value or contributions after provision for operating expenses and valuation reserves, subject to the bylaws; or
>
> (ii) in the case of community service associations as defined in Part IV savings or services are placed in reserve for maintenance or improvement of services provided by the money lent or donated for community welfare, and no patronage dividends or interest or dividends on share capital are paid. [305]

The definition was intended to be a general guide to co-operative principles and to be taken for deciding whether to register a new association or whether to strike an existing association from the Register [306] Generally co-operative leaders approved of the definition.

The new Act continued to distinguish between 'members' and 'patrons' despite the objection of E.F. Saharf who believed that there was no necessity for any reference

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[304] Memorandum 156, 1945 letter from Aronson to Douglas, p1.

[305] S.S. 1946, c. 66, s. 2 (4)

[306] Supra, note 298.

to "patrons" in the Act.[357] A "patron" was defined as "a person not a member but using the services of the association to such extent as may be provided in the by-laws."[358] A patron was so listed (under the definition of "co-operative bank") to a share of any surplus where the by-laws so provided.

Following a recommendation of the Co-operative Farming Conference,[359] the Registrar had intended to make three the minimum number of members required to incorporate a co-operative. However the C.U.S. thought that the number should remain at five (Cudney also wanted a higher minimum), and Aramco heeded the advice and left the minimum at five, with an exception for producers associations which could have three incorporators.[360] In a letter to the Premier Aramco mentioned that as a matter of policy a credit consumer co-operative would not be incorporated if less than thirty members supported it.[361]

The new Act included a number of sections concerning administration and the board of directors that were previously included in the standard by-laws. Some provisions from The Companies Act referring to such matters as quorum and conflict were incorporated.

The Act also included a series of special sections concerning particular types of co-operatives. The section that concerned consumers' co-operatives dealt particularly with the problem of credit transactions. The minimum paid up member capital required before a supplementary by-law approved by a special resolution could permit sales on credit was increased from $5 000 to $20 000.[362] The Act attempted to delineate the responsibilities of the directors and employees of the association with respect to loan votes and sales. The Act stated that, where the directors authorized a credit transaction that was not permitted under the Act, and if the association is liquidated, the directors would be personally responsible for any loss incurred by the association as a result of the transaction. The extent of the personal liability was restricted to the amounts of their

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357 Supra, note 356 at 3

358 S.S. 1950, c. 64, s. 2 (f)

359 Supra, note 350

360 S.S. 1950, c. 64, ss. 3 (1) and 75.

361 Supra, note 356 See also December 1950, Draft Letter from Aramco to Douglas supra, note 167

362 S.S. 1950 c. 64, s. 96.

investment in the co-operative.[397] It became an offence under the Act for an officer or an employee of a consumers' association to purchase or sell goods on credit except in accordance with the instructions of the directors.[398] E.F. Scharf writing in the Co-operative Consumer was concerned that this provision interfered unnecessarily with the employment relationship between the association and their employees[399] but the Registrar chose to leave the section in the new Act.

The following section was introduced concerning the qualifications of directors:

> 72 A consumers' association may by supplemental by-law provide that no member shall be eligible for election as director if any amount owing by him to the association or any subsidiary thereof is in arrear or if he has failed to purchase or obtain from the association during the preceding fiscal year goods, wares or merchandise of such value as may be mentioned in the by-law.[400]

E.F. Scharf objected strongly to this provision. He said that it served no useful purpose and contravened the democratic principle of co-operation. In a letter to the Registrar he said, "It would constitute, I say without a word of factual tendency in a co-operative organisation."[401] (See pp. Cadbury was of the same opinion.[402] But the section remained.

Part III of the Act dealt with "productive associations" and was based on the arrangements started up in 1930 with co-operative farming associations.

Part IV was concerned with community service associations and contained provisions concerning them that resembled those in earlier legislation.

Part V was entirely new and concerned housing associations. At the time they were an emerging form of co-operative and the Department had only limited experience with them. Part VI dealing with federations, was based on the previous Act. A new set of standard by-laws was also drafted to accompany the new Act.[403]

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[397] Ibid, p.60.

[398] Ibid, p.70.

[399] Scharf, note 390, at 8.

[400] S.S. 2000 c. 95, s. 72.

[401] Scharf, note 390, at 8.

[402] Scharf, note 393.

[403] Standard Bylaws approved by P.C.1938/50 on September 20th, 1938, Saskatchewan Gazette, 1938.

12. AMENDMENTS TO THE CO-OPERATIVE ASSOCIATIONS ACT 1950–1960

The Act was soon amended in 1952. A new section required every association except community service associations to provide all members annually with a statement of their share capital and other amounts to their credit, and with the amount credited to them from the surplus of the most recent fiscal year.[810]

The provision allowing one share to be assigned to a spouse from retained patronage dividends where the supplemental by-law permitted it was re-enacted so that a supplemental by-law was no longer required. On August 1, 1952, the Registrar wrote to all secretaries of co-operatives to explain the new amendments and advised them that the assignment of a share to a spouse was at the request of the transferor and with the approval of the transferee.[811] In fact, this does not appear to have been the case. No provision was passed requiring the consent of the transferee, and the phrase "on the written request of the member" that appeared when the measure was introduced in 1949 was left out of the revised Act in 1950, and was not included in the 1952 amendment. Thus, the assignment could in theory legally be made without the approval of either spouse, though it is clear from the Registrar's letter that that was not the intended result.

The 1952 amendments also provided that where a special resolution had been passed to permit credit purchases or sales the resolution became void if the co-operative's paid-up capital fell below the statutory minimum required for such a resolution.[812]

Further amendments were made in 1953 at the suggestion of C.U.S. except that the Co-operative Union had requested the abolition of restrictions on credit transactions and Premier Douglas's government could not see its way to supporting that proposal (Douglas was the Minister of Co-operation and Co-operative Development from 1949 to 1960).[813] The amendments enabled co-operatives with supplemental by-laws permitting

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[810] S.S. 1952, c. 56, s. 8

[811] August 1st, 1952 letter from the Registrar to Secretaries of co-operatives, Saskatchewan Archives, C.U.S. Collection, Call No. 50, File 8(g) cited, note 180

[812] S.S. 1952, c. 56, ss. 10 & 27

[813] February 20th, 1953 letter from Aronson to Lloyd, [Woodrow Lloyd's brother and President of C.U.S.] Saskatchewan Archives, cited, note 700

credit transactions to pass by laws restricting the amount of such transactions and confining them to particular classes of goods designated as the by law [314]

Other amendments required the directors of a consumers association to examine the condition of the business regularly to prepare inventory at least semi-annually and to examine all credit transactions regularly to ensure that they were in conformity with the Act [315]

In November 1953 a meeting held between C.U.S. and Department officials [316] resulted in further amendments to the Act in 1954 The provisions that had previously appeared to the standard by laws concerning withdrawal of members were revised and included in the Act. Also, allowance was made for meetings of members by distincts. [317]

Further insignificant amendments to the Act were made in 1956 [318] 1957 [319] and 1959 [320]

13. THE CO OPERATIVE ASSOCIATIONS ACT 1960

In 1959 the Department of Co-operation and Co-operative Development decided to undertake a further major review of the Act and W Hamilton the Executive-Secretary of C.U.S., sent a circular letter to all co-operative associations and to Federated Co-operatives Limited (F.C.L.) requesting that the co-operatives consider the present legislation and make suggestions for amendments that would facilitate co-operative development. [321] There were a number of replies including one from the Archerwill Co-operative Association Limited in which the secretary commented that he believed that it was the first time that the local co-operatives had been invited to comment on the legislation under which they operated [322] The most prominent obstacle

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[314] S.S. [illegible] c. 31, s. 9

[315] Ibid., s. 8.

[316] Minutes of meeting held on November 10th, 1953 Saskatchewan Archives, [illegible], note 101

[317] S.S. 1954 c. 31, ss. 8 & 9.

[318] S.S. 1956, c. [illegible]

[319] S.S. 1957 c. [illegible]

[320] S.S. 1959, c. [illegible]

[321] May 7th, 1959 letter from Hamilton to Secretaries of co-operatives, Saskatchewan Archives, [illegible], note 203; C.U.S. Collection, Vault No. 10 File [illegible].

[322] June 10th, 1959 letter from Archerwill Co-operative Association Limited to Hamilton Ibid.

expressed in the responses were that there should be no limit on the authorized share capital as this caused unnecessary delays when co-operatives wished to expand their services, that spouses of members should automatically have full membership rights and as usual, that credit restrictions should be abolished. Mr T.F. Bell, the Loans' Finance and Control Director made the following comment concerning the credit restrictions.

> Although the thought behind these three sections dealing with sales on credit is most admirable they appear to be impractical. We say impractical because doing business requires some granting of credit and these sections of the Act have had little effect on those associations that have continued to abuse the practice of extending credit. Some associations have attempted to register a credit by-law but because of their present accounts receivable position, the registrar has not seen fit to register same. It would appear that we are doing nothing more here than forcing these locals to continue to operate outside the requirements of the Act.[212]

With the support of F.C.L. and C.U.S., restrictions on credit transactions were abolished in the re-enactment of 1960. Finally a principle that dated back to the Rochdale Pioneers and had caused difficulties for local associations since 1914 was eliminated. After 1960 the local co-operatives were free to enact their own credit restrictions.[213]

One of the most vexing problems facing the Registrar in 1960 was that of spouses' memberships. It will be recalled that the Act had previously provided that where one spouse had accumulated more than one share from returned patronage dividends a share could be transferred to the other spouse with the approval of the directors. It was generally believed that both spouses must approve the transfer though this was not made clear in the Act.

H.L. Fowler the President of F.C.L. made the following comments on the problem in a letter to W. Hamilton.

> There there is the age-old question of what might be termed "joint membership". Section 32 could be made to read that both sectional and wife are members without the necessity of one having to transfer shares to the other. The Municipal Act has similar provisions and The Co-operatives Act could have it too, but there has always been a reluctance

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212 Judy Bell, 1960 Letter from F.C.L. to Hamilton of C.U.S. [illegible].

213 R.S. 1960, c. 74, s. 37 (4).

> It is not good enough to say that the present Act is workable and that all you have to do is ... The fact is that it has not done ... and I have been at two annual meetings this year. Saskatoon and one other where this thing was one "holy schemozzle," and a disgrace to the co-operative movement.[205]

After considering the above comment, the Deputy Minister B.N. Arneson drafted the following proposed by-law and sent it to L.L. Lloyd the President of C.U.S.

> an association may by supplemental by-law provide that the wife of any member in good standing shall have the right to vote at annual or special meetings of the association even though she is not the holder of a share or has not paid a membership fee.[206]

Ultimately that was not considered to be satisfactory and the resulting amendment closely resembled the previous provision. The new provision stated that where a married member had acquired more than one share, one share could be transferred to the spouse at the written request of the spouse and with the approval of the board of directors. Also a married couple who owned or purchased two shares could apply for joint membership.[207]

In 1960, the phrase "patronage dividend" was changed to "patronage refund," presumably to avoid any suggestion that it was a profit from investment and therefore taxable. The term "patronage refund" is a more accurate description. Also the proportion of the surplus required to be set aside in a reserve fund by a consumer co-operative was reduced from ten per cent to five per cent.[208] The Act also included a new section listing uses to which the fund could be put.[209] Another minor amendment reduced the minimum number of directors for a community service association, production association, housing association or federation to three.[210]

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[205] June 17th, 1949 letter from Fowler to Hamilton, supra, note 203

[206] June 8th, 1949 letter from Arneson to Lloyd, id.

[207] S.S. Ben., '49, c. 58.

[208] Id., c. 73.

[209] Id., c.73.

[210] Id., ss. 79, 81 as and 84.

14 CONCLUSIONS

This paper's concentration on the development of co-operative law in Saskatchewan is justified by the Co-operative Movement being and having been, in the words of George Keen "much more highly and extensively developed in Saskatchewan than in any other province."[880]

It was recognised early that the particular conditions of the Canadian west required different approaches to the co-operative principles which were, after all, derived from consumer co-operatives operating in working class, urban England. In one letter George Keen wrote:

> We are agreed that special conditions of the west militate against the carrying out of Co-operative principles as to the personal attendance of the members at meetings and that we shall be under the necessity of adapting ourselves to conditions as we find them.[881]

An account of the unfolding of co-operative law in Saskatchewan provides a window on the achievements of co-operators who saw the need to ensure that they had more control over their economic destiny than private businesses operating in the province were prepared to allow them.[882] These co-operators achieved a great deal, as is exhibited by the size, strength and importance of co-operatives in Saskatchewan's economic mosaic. Partly as a result of the efforts these co-operators, the economy of Saskatchewan is quite different to that of other Canadian provinces.

The development of co-operatives in Saskatchewan has left an important legacy. The law applicable to co-operatives assist and can help or hinder their development, it can constitute a natural force. The nature of appropriate legislation gives rise to disagreements amongst co-operative actors to this day and can be expected to continue to do so in the future. The law as developed, however should be seen as a monument to

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881 July 31st, 1940 Circular No. 8 id.

880 May 8th 1911 letter from Keen to The Saskatchewan Purchasing Company, unsorted, cited in Vol 4, General Correspondence 1917, id. & General Mail, 1908 letter from Keen to Waldron, id., Vol 30, General Correspondence, 1910, A-G November 30th 1908 letter from Keen to Waldron id., Vol. 30, General Correspondence, 1909, A-G See also April 12th 1909 letter from Keen to Waldron, id., Vol 34 General Correspondence, 1910, A-G It was also difficult for co-operatives to obtain competent legal advice because lawyers were used to dealing with private matters, were not well aware of the application of law to co-operatives. See ibid. May 3rd, 1921 letter from Keen to Richardson, id., Vol 38, General Correspondence, 1921, A-J

882 For an account of the history of Quebec co-operative law see C Gregoire, L'Evolution De La Legislation Coopérative Québecois (1971), 4 Rev du Canadian 47 U.B.C. L.R. 48

a desire to achieve another way of organizing economic activity with a concentration on people, democratic values and community purposes which emphasizes service rather than profit. In the face of the intense opposition from the turn of the century to today this must be seen as an incredible achievement.

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A HISTORY OF SASKATCHEWAN CO-OPERATIVE LAW - 1900 TO 1960

Don Mallord Christopher S. Axworthy
and [illegible]

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A HISTORY OF SASKATCHEWAN CO-OPERATIVE LAW - 1900 TO 1960

BY DONALD MULLORD CHRISTOPHER S. AXWORTHY AND DAVID LISTON*

1 INTRODUCTION

This paper traces the history of Co-operative Law in Saskatchewan from the time before Saskatchewan was a province to 1960. In doing so, it attempts to give the tenor of the discussions among co-operators in Saskatchewan about what the applicable statutes should prescribe and to describe the concerns the provincial government had when it considered the enactment of amendments. Studying the case of Saskatchewan co-operative law is instructive because of the pre-eminence outside of Québec, of Saskatchewan as a "co-operative province". In this capacity it gradually became influential in setting the course of legislation for other provinces.

The history of Saskatchewan law begins with the English model that was transported to Canada prior to Saskatchewan's provincehood. It should be remembered that the U.K. co-operative model was predicated on consumer co-operatives and that adaptations were therefore necessary to accommodate a movement more oriented to producer co-operatives.

2 EARLY ENGLISH STATUTES

When England's first successful co-operative society, the Rochdale Equitable Pioneers Society, was organized in 1844 there was no suitable legislation by which such a society could incorporate. The Joint Stock Companies Act had been passed in 1844[1] enabling joint stock business with 25 members or more to be granted incorporation by the Board of Trade without recourse to a special private Act of Parliament as had previously been the case. However, the 1844 Act did not grant limited liability and the procedure required was too expensive for a small co-operative society.[2]

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1 Joint Stock Companies Act, 7 & 8 Vict. c.89.

2 G.D.H. Cole, A Century of Co-operation, Allen & Unwin, 1944 at 86.

The Rochdale Pioneers applied for enrolment under the Friendly Societies Acts of 1834 and 1862.[3] The Friendly Societies Act had been first passed by Parliament in 1793 to encourage working people to form charitable societies to benefit the sick and infirm and thus to reduce public expenditures.[4] The preamble to the Act stated:

> Whereas the protection and encouragement of friendly societies in this kingdom for raising by voluntary subscription of the members thereof separate funds for the mutual relief of the said members in sickness old age and infirmity is likely to be attended with beneficial effects, by promoting the happiness of individuals, and at the same time diminishing the public burdens;[5]

The Act required that the societies be organized democratically. The members were to assemble from time to time to "constitute such proper and wholesome rules, orders and regulations" for the government of the society.[6] These rules were to be submitted to the Justices at Quarter Sessions for approval,[7] and once approved they could only be altered by the consent of three-quarters of the members at a general meeting where notice of the amendment to the rules had been given at two prior general meetings.[8] The 1793 Act also allowed the society's rules to provide for the resolution of disputes between the society and its members by arbitration.[9] This provision was continued in the later Industrial and Provident Societies Act. The 1793 Act restricted the societies to charitable activities, but the Act was amended frequently in the following years and in 1834 the scope of the Act was broadened to allow Friendly Societies to be organized "for any purpose which is not illegal."[10] This phrase apparently enabled trading societies to be registered under the Act but the general wording created uncertainty as to which activities were permitted. In 1846, as a result of lobbying

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3 Id. at 88.

4 Friendly Societies Act, 33 Geo 3, c. 54.

5 Id., preamble

6 Id.

7 Id., s. 2

8 Id., s. 3

9 Id., s. 16.

10 Amendment to Friendly Societies Act, 4 & 5 Will. 4, c. 40.

by the Rochdale Pioneers and influential co-operative sympathizers the Friendly Societies Act was amended to include the following "frugal investment" clause:

> Be it enacted ... that a society may be established ... For the frugal investment of the savings of the members for better enabling them to purchase food, furing, clothes or other necessaries or the tools or implements of their trade or calling, or to provide for the education of their children or kindred, with or without the assistance of charitable donations: Provided always, that the shares in any such investment society shall not be transferable, and that the investment of each member shall accumulate or be employed for the sole benefit of the member.[11]

Though pleased with this amendment, co-operators viewed the restrictions that registration under the Friendly Societies Act imposed on trading societies' activities as unnecessary. For example, the societies could hold personal property only through non-member trustees and they could not own land, reserves could only be invested with the National Debt Commissioners and there was no provision for federation of the societies.[12] Dissatisfied with their legal status, the societies lobbied for further changes to the Act, this led, in 1852, to the first statute specifically drafted to provide for producer and consumer co-operation, The Industrial and Provident Societies Act.[13]

A. The Industrial and Provident Societies Act, 1852

The title of the Act, which is still used today, reflects the belief that the working men's trading societies would serve a charitable purpose. The margin note to section 1 read: "Societies of working men may be established for attaining the objects of Friendly Societies Acts by means of joint trade."[14] Trading surpluses were to be used for "such provident purposes ... as shall be from time to time authorized by the laws in force with respect to Friendly Societies."[15] Societies would continue to be regulated by the Registrar of Friendly Societies[16] and by section 7 of the Act, "all the provisions of the laws

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11 Amendment to Friendly Societies Act, 9 & 10 Vict., c. 66

12 Supra, note 3.

13 Industrial and Provident Societies Act, 15 & 16 Vict., c. 31

14 Id., s. 1

15 Id., s. 6

16 Id., s. 6

relating to Friendly Societies shall apply to every Society to be constituted under this Act."[17]

Section 1 of the 1852 Act, adopted into early Canadian co-operative statutes, outlines the purposes for which societies could be organized:

> I It shall be lawful for any number of persons to establish a society under the provisions of this and the said recited Act for the purpose of raising by voluntary subscriptions of the members thereof a fund for attaining any purpose or object for the time being authorised by the laws in force with respect to Friendly Societies, or by this Act by carrying on or exercising in common any labour trade or handicraft or several labours trades or handicrafts except the working of mines minerals or quarries beyond the limits of the United Kingdom of Great Britain and Ireland, and also except the business of banking whether in the said United Kingdom or elsewhere, ...[18]

The section indicates that co operative societies were not limited to retail trading and that worker co-operatives of tradesmen were also contemplated. Like the Friendly Societies these co-operatives were to raise capital through voluntary subscription and it has been suggested that worker co-operatives were not as successful in England as retail consumer co operatives because of the difficulty of raising the necessary capital from the workers themselves.[19]

Section 2 of the Act listed matters for which the Rules of the society should provide. Interest on loans was not to exceed 6 per cent, and the value of loans was not to exceed four times the amount of the paid up subscriptions. Dividends on subscriptions were not to exceed 5 per cent (thus providing a different interest rate for loan capital than member capital), and no dividends were to be paid out of the society's capital. Any surplus was to be used firstly to repay loans and then either for increasing capital, for provident purposes under the Friendly Societies Act, or for a patronage refund. The Rules were also to provide for the appointment of managers and other officers, the making of contracts, procedures for withdrawal of members and the

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17 Id., s. 7

18 Id., s. 1

19 See generally the criticisms of Sidney and Beatrice Webb, discussed in E. Orbaugh, The Case for Worker Co-ops, Routledge & Kegan Paul London 1978 at 41-43. J. Thornely, Workers Co-operatives: Jobs And Dreams, Croom Helm, London, 1981 at 15-20.

arbitration of disputes, and the method of dissolution of the society.[20] The Act did not provide a procedure for adopting these rules, but it is probable that this was not considered necessary since the Friendly Societies Acts provided for democratic control by the members or a committee of members.

Section 3 stated that members' interest was not transferable.[21] This was an important restriction since it prevented control of the societies from passing into the hands of persons who were not the societies patrons.

Section 9 of the Act limited a member's interest member to one hundred pounds.[22] Section 11 stated that the liability of members was unlimited.[23] This was a significant deterrent to working-class investors but it could be circumvented to some degree by vesting property absolutely in the hands of trustees.[24] It is not surprising, however that limited liability was withheld from the co-operative societies in 1852, since it was not extended to companies until 1855. In that year Parliament enacted the Joint Stock Companies Act,[25] which for the first time limited the liability of the shareholders to the amount unpaid on their shares.[26] This Act was the model for company legislation in England and Canada for over a hundred years.

The Industrial and Provident Societies Act was extensively revised in 1862[27] to include several of the provisions made for joint stock companies in the 1855 Act. For example, the 1855 Act provided that the minimum number of persons that could form a limited liability company was seven and that the association could be formed "for any lawful purpose".[28] Similarly the 1862 Act required a minimum of seven persons to form a society and stated that societies could be formed for any purpose permitted by law.

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20 Supra, note 13, s. 8.

21 Id., s. 8.

22 Id., s. 8.

23 Id., s. 9.

24 Supra, note 2 at 196.

25 Joint Stock Companies Act, 19 & 20 Vict., c. 47.

26 Id., s. 47.

27 25 & 26 Vict., c. 87.

28 Supra, note 21 s. 8.

except mining quarrying and banking.[28] Both Acts limited shareholders' liability to the value of their shares,[29] but in consideration of that privilege, both societies and companies were required to have a registered office to which notices and communications could be addressed,[30] and to paint or affix an easily legible sign in a conspicuous position on every office or place of business.[31] Stiff penalties for non compliance were included in both Acts.[32] The 1855 Act prohibited a company from registering under a name identical to that of a subsisting company or so nearly resembling such a name as to be "calculated to deceive".[33] This provision was broadened in the 1862 Act to prohibit names that were "likely to deceive".[34] The Friendly Societies Acts, previously applicable to co-operative societies in toto, were made applicable only to exemptions from stamp duties and income tax, settlement of disputes by arbitrators or justices, compensation of members unjustly excluded, the power of the courts in the case of fraud and the jurisdiction of the Registrar of Friendly Societies.[35] Comprehensive provisions in the 1855 Act for winding up companies were made applicable to societies.[36]

The 1862 Act did not follow the 1855 Joint Stock Companies Act in providing for general and special meetings of shareholders or for a comprehensive schedule of regulations for managing the company. The 1862 Industrial and Provident Societies Act was less precise in its requirements. The Rules of a society were to be registered with the Registrar of Friendly Societies,[38] and were to be available to any person on payment of a sum not exceeding one shilling.[39] The Act included a schedule of matters for which

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28 Supra, note 27 s. 8

29 Supra, note 26, s. 38 supra, note 27 s. 10.

30 Supra, note 26 s. 39 supra, note 27 s. 5.

31 Supra, note 26, s. 39 supra, note 27 s. 10.

32 Supra, note 26, s. 39 supra, note 27 s. 8

33 Supra, note 26, s. 8

34 Supra, note 27 s. 8.

35 Id., s. 16

36 Id., s. 17

37 Id., s. 5

38 Id., s. 7

the Rules were to provide For example they were to provide for the mode of holding meetings and right of voting and for making or altering rules The frequency of meetings was not prescribed and the principle of one member-one vote was not specifically included The specific restrictions in the 1852 Act on the interest to be paid on loans or members' subscriptions was dropped in favour of a general statement that the Rules were to provide for "the mode of application of profits" The overall effect of the 1862 Act was to remove some of the restrictions on the societies under the previous Act, and to treat the societies as commercial businesses rather than as special kinds of social or charitable institution

B. The Co-operative Principles of the Rochdale Pioneers

The Rochdale Equitable Pioneers Society evolved a set of principles for co-operative societies. The Pioneers did not commit these principles to a written list and it is probable that they evolved over a period of years. Consequently different authorities quote different "principles," and in recent years there has been some debate about the actual number of Rochdale Principles. W.B. Francis writing in 1959 lists nine principles that he regards as fundamental for co-operative ventures:

1 Democratic control: one member one vote
2 Limited interest on capital.
3 Patronage dividends
4 Unlimited membership
5 No credit; business on a cash basis.
6. Educational work.
7 Political and religious neutrality
8 Goods and services of high standard.
9 Co-operatives sell goods or provide services at the market price [48]

It is interesting to note that while the Industrial and Provident Societies Act of 1852 referred to limited interest on capital and patronage dividends, the 1862 Act does not refer specifically to any of the principles. The purpose of the 1862 Act appears to be to regulate the interaction of the society with other businesses and with the government but to leave internal management in the society and its members Since most of the co-operative principles are concerned with the co-operatives internal management they were not incorporated into the legislation of 1862.

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[48] W.B. Francis, Canadian Co-operative Law, Toronto: Cartwell, 1959, at 6.

3 EARLY CANADIAN CO-OPERATIVE LAW

A. The First Canadian Co-operative Statute

In 1865 the Ontario legislature passed an Act Respecting Co-operative Associations[43] closely modelled on the Industrial and Provident Societies Act of 1862. The purposes for which an association could be organized were much like those set out in the 1862 Act[44] as were the conditions under which an association could commence operations. Before it could do so, it was to frame a set of rules for regulating governing and managing the association. The rules were to provide for the following matters:
a) mode of convening general and special meetings, and of altering rules,
b) provisions for the audit of accounts,
c) power and mode of withdrawal of members and provisions for the claims of executors or administrators of members,
d) mode of application of profits,
e) appointment of managers and other officers, and their respective powers and remuneration, and provisions for filling vacancies occasioned by death, resignation and other causes.[45]

The 1865 Act does not distinguish between general meetings and special meetings but in 1861 the province of Canada had passed The Joint Stock Companies General Clauses Consolidation Act,[46] which did distinguish between the two. A special meeting was defined as a meeting called by one fourth part in value of the shareholders of the company for the transaction of any business specified in the notice of the meeting.[47] Since Section 1 of the Companies Act provided:

> 1. When not otherwise expressly enacted this Act shall apply to every joint stock company incorporated by any Act hereafter to be passed for any of the following purposes...[48]

it is possible that the drafters of the 1865 Act intended that the distinction used in the Companies Act would be applied to co-operatives.

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43 Co-operative Associations Act, S.O. 1865, c. 30.

44 Id., s. 4.

45 Id., s. 5.

46 S.C. 1861, c. 18.

47 Id., s. 10.

48 Id., s. 1.

The complete title of the 1865 Co-operatives Associations Act was "An Act to authorize the formation of companies or co-operative associations for the purpose of carrying on in common any trade or business." The distinction between companies" and "co-operative associations" is not explained in the Act. However, section 2 of the 1861 Companies Act stated:

> 2 For the purpose of incorporating this Act or any of its provisions with a special Act it shall be sufficient in such Act to enact that the clauses of this Act or such of them as in such Act maybe particularly designed to that end shall be incorporated with such Act [47]

However the drafters of the Co-operative Associations Act did not specifically incorporate the provisions of The Joint Stock Companies Act, and so it could be argued that the meanings of "general meeting" and "special meeting" in the Act were not incorporated into the 1865 Act.

Another possible interpretation of the words "special meeting" is suggested by section 7 which prescribes the manner of altering the rules:

> 7 After such rules have been certified it shall be lawful for such Association by resolutions at a meeting specially called for that purpose, to alter, amend, or rescind the same or any of them or to make new rules [48]

Possibly it was intended that a special meeting was one called to alter the rules.

The 1865 Act included two of the Rochdale Principles: elections were to be by ballot, and each member was to have only one vote.[49] Also, the association's business was to be conducted strictly on a cash basis; no credit was to be given or taken.[50] This last provision was the only one to give rise to reported litigation.

B. Early Cases Concerning Cash Trading

The Rochdale Funners imposed the restriction on their society that trading be on a cash basis only because some of the them remembered that an earlier attempt to form a co-operative store in Rochdale had failed when it overextended credit to members who

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47 Id., s. 2

48 Supra, note 41, s.7

49 Id., s. 8

50 Id., s. 15

could not afford to buy groceries[81] The restriction became a constant source of difficulty for co-operatives in the following one hundred years and the principle was eventually abolished

The first reported case in Canada under a co-operative statute concerned cash trading.[82] By the latter half of the nineteenth century the London Co-operative Association Limited regularly purchased goods from the plaintiff The transaction was considered to be for cash if payment was made within thirty days. The invoices were placed before a board meeting of the trustees and if found to be correct, were paid by the treasurer The plaintiff brought action when the co-operative failed to pay invoices to the value of $895 80 Counsel for the co-operative argued that the transaction was not for cash, and that therefore the plaintiffs could not recover Section 15 of the Co-operative Associations Act stated.

> 15. The business of the Association shall be a cash business exclusively no credit shall be either given or taken, and no officer member or servant of the Association or any number of them together, shall have power to contract any debt whatever in its name except in respect of rent on the premises required for the business, the salary of clerks and servants, and such like contract, necessary in the management of the affairs of the Association, everything shall be bought and sold for cash only [83]

It was held that the co-operative could not incur any debt whatever, except as provided in Section 15, and that it was therefore incapable of incurring any liability The Act provided for publicity of the character of co-operative associations and parties transacting business with them should enquire as to their powers and liabilities. The court held that for a valid transaction there must be either prepayment or simultaneous delivery and payment

The principle of cash trading under the Ontario statute was considered again in Ontario Co-operative Stone-Cutters Association v Clarke et al.[84] The defendant had a contract with the Dominion government to construct a section of the Welland Canal and subcontracted with the plaintiff to build the canal's stone walls The defendant did not carry out its contract with the Government, and the plaintiff unable to perform its part

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81 Cole, supra, note 3

82 Fitzgerald et al v London Co-operative Association Limited (1868) 27 U C Q.B 465

83 Supra, note 43, s. 15

84 (1880) 31 U.C R.P 280.

of the contract brought action for loss of profit. The defendant claimed that it was not liable under the contract because it was not a cash transaction, and argued that Fitzgerald v London Co-operative Association[83] supported its contention that the co-operative could not enter into any contract except for cash. The court observed that section 1 of the Act permits the association to carry on "any labour, trade or business" and held that a contract necessary to carry on a "labour" or "trade" was to be distinguished from contracts of buying and selling. The court stated that the restriction to cash transactions applied only to buying and selling, and that the contract at issue in this case was necessary for managing the Association's affairs and was therefore specifically excepted in the Act.

The courts again considered the effect of the cash trading restriction in 1897 in Struthers v Mackenzie.[84] The Wyoming Co-operative Association regularly purchased on credit from the plaintiffs R.C. Struthers & Co. The plaintiffs were unable to recover against the co-operative and brought action against the manager, the treasurer and the directors personally. They argued that there was an implied representation or warranty of authority in law of the association to purchase goods on credit. The court held that the plaintiffs must be taken to have known that the defendant co-operative association was such, and must have known of the statutory restriction on credit sales. Thus the plaintiffs and the defendants had equal knowledge of the legal restriction, and there could be no implied representation or warranty. The plaintiffs also argued that the defendants had benefited by reselling the goods, and should account for the value of them. The court came to the rather odd conclusion on this issue that the defendants had used the proceeds from the plaintiff's goods to relieve the defendants from a personal liability for other goods purchased by the association, and had not therefore derived a personal benefit from the goods.

C. Manitoba Co-operative Associations Act, 1887

Little appears to be known about early consumer co-operatives in western Canada, but it is probable that the increased settlement of the prairies after 1880 brought with it settlers who were aware of co-operative developments in England and eastern Canada. It is known that there was a co-operative store in operation at Winnipeg, because on May

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83 Supra, note 81.

84 (1897), 21 O.R. 381 (Div. Ct.)

13th, 1883 the Winnipeg Co-operative Association placed an advertisement in the Winnipeg Daily Sun.[57]

In 1887 the Manitoba Legislature passed an Act Respecting Co-operative Associations,[58] perhaps in response to the needs of small groups such as the Winnipeg association. The Act was almost identical to the Ontario Act which had been slightly amended in 1880[59] and 1884.[60] According to Trevena, there may have been a few incorporations under the Act but it was generally forgotten until 1913.

4 EARLY CO-OPERATIVE DEVELOPMENT IN SASKATCHEWAN

A. Saskatchewan Prior to 1913

The first co-operative organization to appear on the prairies The Patrons of Industry was founded in Michigan in 1887 and spread rapidly to Ontario and then in 1891 to Manitoba. The organization was at its most successful in 1895 when there were 330 lodges with a membership of about 5 000 in western Canada.[61] The main purpose of the Patrons of Industry was to improve the economic position of the settlers by co-operation. The local lodges placed sufficiently large orders with a department store to obtain discounts. The County Association pooled orders from the lodges for enough supplies to fill a boxcar. When the car arrived at Regina, the supplies were distributed from the track to farmers who drove in to collect them.[62] The Patrons entered federal politics in 1896 but only one Patron member, Dr. Douglas from Eastern Assiniboia was elected, the organization disintegrated because of disagreements among the leaders after the election.[63]

In 1896, two brothers attempted to establish a utopian co-operative community near Tantallon on the Qu'Appelle River. The preamble to the Constitution explained their purpose:

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57 J. Trevena, Public Co-operation - A Plan, Saskatoon: Co-operative College of Canada, 1975, at 69.

58 S.M. 1887, c. 17.

59 S.O. 1880, c. 33.

60 S.O. 1884, c. 27.

61 E.A. Partridge, Grain Growers Co-operation in Western Canada, Cambridge, Harvard University Press, 1928 at 88.

62 J. Hawkes, Saskatchewan and Its People, Regina, The S.J. Clarke Publishing Company 1924, at 698.

63 Id., at 699.

> Feeling that the present competitive social system is one of injustice and fraud and directly opposed to the precepts laid down by our Saviour for the guidance of mankind in subduing all the forces of nature and the evils springing from selfishness in the human heart, we do unite under the name of the "Harmony Industrial Association" for the purpose of acquiring land to build homes for its members to produce from nature sufficient to insure its members against want and the fear of want.
>
> To own and operate factories, mills, stores etc. To provide educational and recreative facilities to the highest order and to maintain harmonious relations on the basis of co-operation for the benefit of its members and all mankind in general.[64]

The membership grew to about fifty people; they operated a blacksmith shop, a carpentry shop, a laundry and lime kilns and produced flour and butter. The community was not as successful as the founders had anticipated partly because a railway that was expected was never constructed, and in 1900 the community was harmoniously dissolved.

Political lobbying in Ottawa by Dr. Douglas led to the enactment of The Manitoba Grain Act in 1900.[65] This Act was intended to palliate the difficulties western grain farmers were having with the C.P.R.-private elevator monopoly. By the Act farmers had the legal right to obtain railway cars directly, and to load them either over loading platforms or through flat warehouses, they no longer had to depend on the line elevator companies. However, the railways were unable to move a large portion of the record crop in 1901 before freeze up at the Lakehead, and both businessmen and farmers were indignant. W.R. Motherwell, a former free Indian Head who had observed the failure of the Patrons of Industry in the 1890's, organized the Territorial Grain Growers Association (T.G.G.A.) with the object of uniting farmers to counter the dominance of the private grain-handling interests.[66] The Association successfully lobbied to enforce farmers' rights under the Manitoba Grain Act, and obtained amendments to the Act favourable to farmers.[67] The Province of Saskatchewan was created in 1905, and in the

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64 G. Johnson, The Harmony Industrial Association, (1901) 8 Saskatchewan History 23 [...]

65 Jones, note 61, at 20-24.

66 Id., at 28.

67 W.A. Mackintosh, Agricultural Co-operation in Western Canada, Toronto: Ryerson Press, 1924, at 54.

following year the name of the T.G.G.A. was changed to the Saskatchewan Grain Growers Association (S.G.G.A.).

In 1904 E.A. Partridge, a Simmins farmer, proposed at a T.G.G.A. meeting that a farmers' company be formed to sell grain co-operatively.[68] He believed that a farmers' company operating in the commission market at the Winnipeg Grain Exchange would be a financial success and would eliminate price fixing by the private grain companies. The grain growers' associations did not initially support Partridge's proposal but in 1906, Partridge and a group of Simmins grain growers formed the Grain Growers Grain Co. Ltd. (G.G.G.C.). The new company quickly obtained a seat at the Exchange, and despite great hostility from the private trade and an expulsion order that had to be reversed by the Manitoba government, the G.G.G.C. succeeded in maintaining its position at the Exchange. By 1912 the company had 27,000 farmer-members and was selling 28 million bushels of grain annually.[69] The company recognized that farmers sell products at wholesale prices but generally purchase as retail consumers. The company considered entering the business of farm supply purchasing, in addition to its regular business of grain marketing,[70] but did not do so until 1913.

B. The Role of The Co-operative Union and of George Keen

The Co-operative Union of Canada was formed on March 6th, 1909, largely on the initiative of George Keen, then President of an Ontario co-operative.[71] This was to have a profound effect on the development of co-operatives and co-operative law in Saskatchewan and elsewhere in Canada. The Co-operative Union was instituted to

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68 M., at 18.

69 Ian MacPherson, The Co-operative Movement on the Prairies, 1900-1955, "Canadian Historical Association Booklet No. 38" Ottawa, 1979, at 6.

70 Supra, note 53, at 301.

71 Ian MacPherson, Building And Protecting The Co-operative Movement, A Brief History of The Co-operative Union of Canada, 1909-1984, CUC, Ottawa, undated, at 2.

promote co-operatives and co-operation in general but for the purposes of this paper one object set out in its by-laws is of particular interest. By law 2(e) read as follows:[72]

> to protect the interests of the co-operative movement by action whenever necessary as to Federal legislation and administration and through the provincial or regional sections as to provincial legislation and administration

This by law indicates that the Co-operative Union was organized with regional and provincial sections to better enable it to fulfil its mandate.[73] Keen's view was that the provincial sections of the CUC should be expected to "exercise more influence in provincial legislatures than can be expected by the Dominion executives and officials."[74] Keen also warned provincial sections to "carefully watch Bills which are introduced into Provincial legislative assemblies and particularly by private trade organizations. Action against co-operators in that field are not likely to be frontal attacks. It will be by indirection. The word 'co-operative' will not appear."[75]

From the time of his appointment as the first General Secretary of the Union in 1909 and for over thirty five years thereafter Keen corresponded prolifically with Saskatchewan co-operatives and co-operators. He dispensed advice and assistance on many matters of importance to co-operatives, including co-operative legislation. He made regular trips to Saskatchewan to consult co-operators and he built up a close relationship with the Co-operatives and Marketing Branch of the Saskatchewan Department of Agriculture, especially with W.W. Waldron and his successor R.N.

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72 Co-operative Union of Canada, Public Archives of Canada, Call No. MG 28 I 15 Vol. 1. By-laws of the Co-operative Union of Canada. The failure to obtain the passage of Federal co-operatives legislation was very much on the minds of the first activists in the Co-operative Union. This concern continued for a very long period of time. At least at the 1930, 1936, 1937 and 1939 Congresses, for example, a resolution was passed calling on the Federal government to introduce legislation on co-operatives and urging each of the provincial governments to introduce co-operative credit legislation and to amend their various statutes dealing with co-operatives so as to permit co-operatives in one province to operate branches in other provinces up to a distance of ten miles away from the interprovincial boundary. Dissatisfaction with the legislative regime is illustrated by the fact that when Canadian Co-operative Implements Ltd. was established in 1940 it was incorporated under the Companies Act, 1934. See October 30th, 1935 letter from Waldron to Keen, Id., Vol. 57, General Correspondence, 1938, C-K.

73 However, the Public Archives show that the CUC's presence in Saskatchewan was often regarded as unsatisfactory. It appears too that the provincial sections either did not work well or were non-existent. See, e.g., the Congresses of 1930-1932, Id., Vol. 9. Congresses 1930, 1930, 1930, 1932, 1935, 1936. It was not until the 1936 Congress in Toronto that a resolution was passed to establish a Saskatchewan section of the CUC.

74 Circular from Keen to affiliated co-operatives, July 31st, 1936, Id.

75 Directive from Keen, National Co-operative Re-organization, 1941, Id.

Arnason. The Branch assisted with Keen's visits to Saskatchewan and its officials had frequent meetings with him when he was in the Province. Waldron even urged co-operative retails to join the CUC.[76] Keen's assistance in the push for co-operative legislation in Saskatchewan is well documented.[77]

C Progress in the West

In 1911 the G G G C obtained a new federal charter by special Act of Parliament[78] in order to broaden its territorial scope and operations. The Act incorporated several co-operative features. Stockholders were required to be farmers, farm owners or farmers' wives; individual stockholdings were restricted to a value of $1 000; each shareholder had only one vote; and surpluses could be distributed on other than a share basis.[79] The objects of the company were couched in very broad terms:

> To produce, manufacture, export, import, buy, sell, deal in, and deal with all cereals ... and all products or by-products of the farm, and all machinery, implements, goods, wares, and merchandise which may be used in the production and manufacture of the products of the farm, and all articles, substances and things which may be utilized in the said product or in the maintenance, cultivation, improvement and development of farms.[80]

The Act passed in the House despite considerable opposition from members sympathetic to the interests of retail merchants.[81] The company had a strong central organisation but for it to operate an effective farm supply business, organisation at local centres was necessary.[82] In 1912 the company leased the Manitoba government elevators with the intention of using the elevator system to distribute farm supplies.[83] In 1913 the

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76 November 30th 1909 letter from Waldron to Keen, id., Vol 52, General Correspondence 1930, C-S.

77 See e.g. correspondence between Keen and the Saskatchewan Registrar of Joint Stock Companies, id., Vol 3, General Correspondence 1908-1909.

78 S.C. 1911, c. 30.

79 Id., ss. 4, 8, 8, 17.

80 Id., s. 12.

81 Kyrke, note 69, at 165.

82 Id., at 288.

83 Id., at 284.

Co-operative Supply Department was established in Winnipeg and initially supplied flour feed coal and apples. In 1913-14 8 926 tons of apples and 5 336 barrels of apples were supplied. In 1914 lumber binder twine fencing and farm implements were added.[34]

Under pressure from the Manitoba Grain Growers Association the government of Manitoba in 1910 established a system of government owned elevators.[35] The farmers anticipated that this move would result in better terms for farmers selling grain but the government system did not receive sufficient support from farmers and lost large sums of money in its two years of operation. The Manitoba government appeared to be relieved to lease the system to the G G G C in 1912. In Saskatchewan pressure from farmers for a government-owned elevator system resulted in a Royal Commission to study their situation and the Commission recommended that a co-operative farmer-owned and locally controlled elevator company be set up with government assistance.[36] The government accepted the Commission's recommendations and in 1911 the Saskatchewan Co-operative Elevator Company was incorporated by a special Act of the Legislature.[37] The company was successful and in 1913 the Alberta Legislature passed a similar Act to incorporate the Alberta Farmers' Co-operative Elevator Company.[38] The Alberta Act, in addition to empowering the company to operate a line of elevators and to deal in grain also provided that the company could engage in the supply of goods and chattels to farmers;[39] the Alberta company immediately commenced a co-operative supply department.

In Saskatchewan co-operative trading was initiated differently. In 1913 the Provincial government established a Royal Commission to investigate the high cost and difficulty of obtaining agricultural credit. The Commission in an extensive report considered the problem of agricultural credit but also addressed broader problems facing

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34 Id., at 389

35 Supra, note 31 at 79-80

36 Report of the Elevator Commission, Regina, 1910

37 Saskatchewan Co-operative Elevator Act, S.S. 1911 c. 30

38 Alberta Farmers Co-operative Elevator Act, S.A. 1913 c. 13

39 Id., s. 4

the rural economy.[90] The solution proposed by the commissioners was the encouragement of co-operative effort. They stated:

> In view of the changing conditions of our economic life the Commissioners believe that a solution to our problems must be sought along two lines which after all do not greatly [sic] differ
>
> 1. The spread of co-operative effort especially at present in the direction of selling and purchasing
>
> 2. The fostering of financial institutions of our own with sympathies for our own problems and control by our own people.[91]

The first recommendation of the Commission was as follows:

> 1. That inasmuch as in the experience of older communities cheaper agricultural credit is invariably associated intimately with other phases of agricultural co-operation; such additional legislation be enacted by the Legislature and information and guidance provided by the government as will further facilitate on the part of the farmers of the province the establishment on a sound basis of a system of local and central rural co-operative societies for purchasing and selling farm products and supplies.[92]

The government responded by establishing the Co-operative Organization Branch within the Department of Agriculture "to foster in every legitimate way co-operative organization of farmers for purposes of production, marketing and purchasing of supplies."[93] The first Director of the Branch was W.W. Thomson, an agriculture graduate who had studied agricultural co-operation in the other provinces, some U.S. states and Europe.[94] The legislature also passed two statutes in response to the Commission's report: The Saskatchewan Co-operative Farm Mortgage Association Act[95]

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90 Report of the Agricultural Credit Commission of the Province of Saskatchewan, Regina 1913

91 Id., at 204

92 Id., at 217

93 Annual Report, Co-operative Organizations Branch, 1913, at 3

94 Public Service Monthly, October 1916, at 10.

95 6 & 7 Geo. V, c. 61.

and the Agricultural Co-operative Associations Act.[96] Prior to 1913 some local groups had been formed to order carloads of supplies co-operatively. The purpose of the Agricultural Co-operatives Associations Act was to provide legal status for such associations and to simplify incorporation procedures for new associations. Even though prior to the enactment of co-operative legislation co-operatives could only be incorporated under the Companies Acts,[97] model co-operative by-laws for such incorporation were a long time coming as they were for co-operatives that did not qualify for incorporation under the Agricultural Co-operatives Associations Act.[98]

5 THE SASKATCHEWAN AGRICULTURAL CO OPERATIVE ASSOCIATIONS ACT, 1913

The Act provided that five or more persons could incorporate an association "for the purpose of producing, purchasing or selling livestock farm products or supplies on the co-operative plan".[99] "Supplies" was defined as "building and fencing material fuel flour feed and such other commodities as may be shipped in car lots and distributed from a warehouse; the word shall not be interpreted as applying to a retail business."[100] This definition immediately gave rise to uncertainty as to the restriction it imposed on the associations. For example, was it necessary to ship "building and fencing material, fuel flour and feed" in carlots or did this restriction apply only to "commodities"? The Deputy Attorney-General, T A Colclough sent his interpretation of the definition to the W W Thomson, Registrar of Agricultural Co operative Associations in a letter dated April 14th 1914.[101] He observed that the Interpretation Act required that the expression "may" in a statute should be construed as permissive but concluded that to do so would not give a sensible meaning, and that the word should therefore be considered as

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96 S.S. 1913 c 42.

97 1901, c. 30, as am.

98 A December 1913 letter from Kaan to John Corbett of Hull Lake indicated that a model by-law was not available although it appeared to be the practice for established co operatives to send copies of their by-laws to new societies: supra, note 72 Vol. 11 General Correspondence 1913 A L. The reason for this given by Kaan was that we have no definite statute for the whole Dominion. Letter from Kaan to S. Smith of Star City Saskatchewan, id., Vol 12 General Correspondence 1913 M Y Standard By laws did become available from the Department of Agriculture in 1914.

99 Supra, note 97 s 4.

100 Id., s. 3(3)

101 April 24th 1914 letter from T.A Colclough to W W Thomson Director, Co-operative Organizations, Saskatchewan Department of Agriculture, Saskatchewan Archives, Saf No. 428 box 1

imperative. He further concluded that "as may be shipped in carlots" related only to "commodities" and therefore that "building and fencing materials fuel flour [and] feed" need not be shipped in carlots. Furthermore a carlot of "commodities" need not consist of an entire carlot of one commodity but could contain a number of different commodities. In all cases, however, Colclough was of the view that supplies must be purchased in greater than retail quantities.

The restriction to cash trading espoused by the Rochdale Pioneers and included in the earlier Ontario Act was made applicable to associations in Saskatchewan. An exception permitted associations to purchase on credit real estate to be occupied as business premises and to take out a mortgage to secure the unpaid balance.[102]

The Act initially required that seventy five per cent of the shareholders be "agriculturists"[103] thereby effectively preventing the organization of co-operatives in urban centres or amongst industrial workers.[104] The liability of a shareholder to the creditors of the association was limited to the unpaid balance on his shares.[105] At meetings each shareholder was entitled to one vote and voting by proxy was prohibited.[106] The association was required to send to the Registrar of Co-operative Associations, each January, an annual return including an audited financial statement for the previous year up to the 31st of December. The return was also to be provided free of charge to any shareholder on request.[107]

A formula was provided for apportion an association's profits. First the directors were to set aside not less than 10% of the net profits for a reserve fund until the fund

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102 Supra, note 97 s. 5.

103 Id., s. 8.

104 Cf. December 31st letter from Thomson to Kane, supra, note 78, General Correspondence, Vol. 13, 1913, T. M. Thomson noted that "the Act is designed primarily to aid agricultural co-operative associations, but as 25% of the shareholders of any association may belong to the urban population its operation is by no means confined exclusively to the farming community". It appears however that Thomson thought that farming communities were more likely to have people experienced in business than would urban groups, owing to farm co-operatives' consequent ability to encourage co-operatives in rural areas than in urban areas. He wrote: "Any restrictions placed on the business of associations will I trust prove not a check to their development, but rather a safeguard which will prevent many failures which would otherwise result from placing inexperienced men in charge of complicated business concerns." There was also a recognition, on the part of Thomson, that there was a considerable need to develop the "co-operative spirit" among the people of Saskatchewan.

105 Supra, note 97, s. 7.

106 Id., s. 14.

107 Id., s. 17.

had amounted to at least thirty per cent of the paid up capital stock. Then six per cent interest was to be paid on the paid-up capital stock. The remainder of the profits was to be divided among the patrons (whether shareholders or not) in proportion to the volume of business conducted by each patron with the association. A proviso permitted the association to retain the patronage dividend of a patron who was not a shareholder until the par value of one share had accumulated when a share certificate was to be issued to the patron.[109] The Act does not refer to "membership" and it must be inferred that there is no distinction between a shareholder and a member of the association. The standard by-laws approved pursuant to the Act provide that a that the directors or "not less than one fifth of the shareholders" may requisition a special meeting but that if a quorum is not present and the meeting was convened "upon the requisition of members" it shall be dissolved.[110] These provisions imply that "member" and "shareholder" are synonymous under the Act. It follows that a shareholder who had been allotted a share according to the above procedure would have all the same rights in the association as a shareholder who had voluntarily subscribed for a share.

Dissolution of the association required the consent of three-fourths of the shareholders testified to by their signatures on an instrument of dissolution.[111] This provision later caused difficulty when associations wished to dissolve and more than one-quarter of the shareholders had for one reason or another ceased to be active members.

The 1913 Act required the Registrar to prepare standard by-laws not inconsistent with the Act that would be applicable to every incorporated association and to submit them for approval to the Lieutenant-Governor in-Council.[112] These standard by-laws were approved by Order-in Council on January 8, 1914.[113] The Act permitted co-operatives to pass supplemental by laws of their own that would become operative if approved by the Registrar and if not inconsistent with the standard by laws.[114] The standard by-laws provided a comprehensive code for the internal management of the co-

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109 Id., s. 38.

110 Standard By-laws governing all Associations incorporated under the Agricultural Co-operative Associations Act, Saskatchewan Gazette, 1914, vol. 10, no. 1, at 8, Article I.

111 Supra, note 97 s. 26

112 Id., s. 8

113 Supra, note 110

114 Supra, note 111.

operative, and since they were binding on all co-operatives these by laws became the basis for the management of co-operatives in Saskatchewan These standard by laws were amended from time to time but remained in force until 1963 when they were repealed and replaced [114]

The standard by laws of 1914 included precise requirements for meetings. The first general meeting was to be held within two months of the association registering at a time and place to be determined by the provisional directors [115] The term "provisional directors" is not defined, but must be presumed to refer to the five or more incorporators mentioned in section 4 of the Act The by-laws further required that the co-operative hold an annual meeting on the second Wednesday of January [116] Thus all co-operatives held their annual meeting on the same day of the year Special meetings could be held at the directors' call or by written requisition (stating the object of the meeting) of not less than one fifth of the shareholders. When the directors received the requisition they were required to call the meeting forthwith, and if they failed to do so within 21 days from the date of the requisition the requisitionists or any other shareholders amounting to the required number could call the meeting Each shareholder was to receive a notice in the mail at least 10 days prior to the meeting and an announcement of the meeting was to be placed in at least one newspaper circulating in the neighbourhood A quorum for any meeting was one-fifth of the registered shareholders.[117]

The effect of these standard by laws was that a co-operative customarily held just one meeting in the normal course of events — the annual meeting Between annual meetings the directors administered and controlled the business and were not required to involve the members. That was perhaps one of the most unfortunate aspects of the by-laws, since it artificially restricted the amount of interest that members were expected to take in their co-operative The Rochdale Equitable Pioneers Society held quarterly meetings[118] at which the directors were expected to respond to the members concerns;

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[114] Co-operative Act, S S 1913, c 27.]

[115] Supra, note 108 Article I

[116] Id.

[117] Id

[118] Supra, note 57

early Saskatchewan co-operatives which had a significant failure rate (50% between 1914 and 1938),[119] might have benefited from more frequent members' meetings.

The voting provision in the standard by-laws was as follows:

> At all meetings of the association each shareholder in good standing shall have one vote, and a majority vote of the shareholders present shall decide all questions.[120]

The phrase "in good standing" is nowhere defined and its meaning is uncertain. One might assume that it referred to a shareholder who had fully paid for a share, but shares were payable by instalments as provided by the by-laws.[121] In the early co-operatives shares were often not fully paid-up and it is improbable that the bylaw was intended to disenfranchise such a large group. More probably a shareholder was considered to be in good standing if he had paid all the instalments that were due to be paid under the by-laws.

The above voting provision must be read as subject to other sections which provided for other than a majority vote. For example, the supplemental by-law concerning removal of directors was as follows:

> The association at any annual meeting, or at any special meeting duly called for that purpose may by a special resolution, endorsed by a majority of the registered shareholders, remove any director before the expiration of his period of office and may by an ordinary resolution appoint another person in his stead, the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.[122]

Neither "special resolution" nor "ordinary resolution" are defined in the Act or the by-laws, but "special resolution" was defined in The Companies Act, as follows:

> s. 121: A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may

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119 Co-operative Purchasing Associations in The Province of Saskatchewan, Part I, Department of Agriculture Bulletin No. 85 A, Regina, 1938, at 10.

120 Supra, note 110, Article 6.

121 Supra, note 97, s. 8

122 Supra, note 110, Article 10 (emphasis added)

> be present in person or by proxy in cases where by the regulations proxies are allowed at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed.[123]

Since the supplemental by-law refers to a "special resolution endorsed by a majority of the registered shareholders," its drafters probably intended a "special resolution" to be a resolution passed by a three-fourths majority of the registered shareholders at a properly called general or special meeting and entitled under the by-laws to vote.

The standard by-laws provided that supplemental by-laws necessary for the regulation of the association's business could be adopted at a general or special meeting, but in this case by a two-thirds majority of the shareholders present.[124]

The standard by-laws provided that the board of directors be composed of three, six or nine members, elected from the shareholders at the first general meeting. One-third of the board were elected to serve for one year, one-third for two years and one-third for three years.[125] This method of electing provided continuity and a degree of stability as the board would always include some more experienced members. The gradual replacement of board members has continued to be the general practice of Saskatchewan co-operatives to the present day.

The auditor was elected at the annual meeting of shareholders, and the president, vice-president and the secretary-treasurer were elected at the first board meeting after the annual meeting. It was not required that the secretary-treasurer be a director. If the office of the auditor or of a director became vacant, the board appointed a replacement to serve out the rest of that officer's term.[126]

The general duties and powers of the directors were outlined in the standard by-laws as follows:

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123 R.S.S. 1909, c. 72, s. 111.

124 Supra, note 110, Article VIII.

125 Id., Article 66.

126 Id.

> The directors shall have the general management and control of the business and property of the association and shall have power
>
> a) To allot and transfer the capital stock of the association subject to the provisions of section 11 of The Agricultural Co-operative Associations Act
>
> b) To engage define the duties and fix the remuneration of such officers and employees as they may deem necessary for the carrying on of the business of the association [127]

This provision appeared to give exclusive control of the co-operative to the board of directors, and as such, was in conflict with the principle of democratic control as understood by early co-operators. When the Rochdale Pioneers formulated the co-operative principles in the mid-nineteenth century the principle of democratic control was given particular emphasis. The early co-operators anticipated a participatory form of democracy by which the co-operative members would maintain an active interest in the business affairs of the co-operative attend meetings regularly and make resolutions at those meetings. They perceived the board of directors as a body whose role was to put into effect the policies developed by the members and whose powers would be exercised subject to the wishes of the members as expressed in general meetings. The principle that the directors have the exclusive management and control of the business was borrowed from company law and it seems possible that the rigid application of the principle to the area of co-operative law may have led to unnecessary conflict between co-operative members and the boards of directors that represent them.

The relationship between co-operative law and company law has been an uncertain one in some respects a co-operative is simply a particular type of limited liability joint stock company to which similar legal provisions should apply. For that reason, and perhaps because lawyers employed to draft co-operative statutes would normally be familiar with company law, co-operative statutes are often modelled closely on similar company law statutes. However, co-operatives may also be regarded as a unique enterprise with social as well as economic objectives and it can be argued that the social objectives have not been given sufficient emphasis in co-operative legislation.

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127 Id., Article IV

The 1913 Agricultural Co-operatives Act deemed every association to be a company within the meaning of section 142 of The Companies Act.[128] That section made sections 26 to 38 inclusive and sections 40 to 61 inclusive of The Companies Act applicable to co-operative associations. These sections concern the distribution of capital and the liability of members and directors. Thus the definition of "special resolution" a matter raised earlier is not expressly applicable to co-operatives.

The application of the Companies Act to agricultural co-operatives was considered by the Deputy Attorney General shortly after the 1913 Act was proclaimed when an association failed to hold its first general meeting within two months of registration and the Registrar requested an opinion as to whether the association should be considered to be dissolved for failing to hold its first general meeting within the time appointed by the standard by laws.[129] Section 118 of the Companies Act provided that a court could direct that a company be wound up or make any other order as may be just on the petition of any shareholder where the company has failed to hold its first general meeting.[130] The Deputy Attorney General stated that since Section 118 was not expressly made applicable to co-operative associations, the procedure in that section was not applicable either and that a co-operative could only be dissolved in accordance with sections 25 and 26 by resolution of the shareholders. He further stated that the law supports the continuance of a company unless some strong reason is put forward to persuade the court to regard the company as dissolved, and therefore, that the by-law concerning the first general meeting must be considered to be directory rather than imperative.

The final section of the 1914 standard by-laws prescribed the order of business of the annual meeting.

1) The meeting to be called to order by the president or acting president.
2) The reading and disposal of the minutes of the preceeding meetings
3) Business arising out of the minutes
4) Reports of standing committees appointed at a previous meeting.
5) Reports of Special committees appointed at a previous meeting
6) Reports of officers
7) Reports of auditor
8) Unfinished business
9) Nomination and election of officers for the ensuing year
10) Appointment of auditor
11) New business.[131]

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128 Supra, note 97 s. 3 (8)

129 June 18th, 1914 letter from T.A. Colclough to Thomson supra note 102

130 R.S.S 1909, c 72, s. 118

131 Supra, note 118, art. 11

This rather rigid agenda (with minor modifications) continues to be followed by Saskatchewan co-operatives. Consequently during meetings the members must listen to a large number of sometimes lengthy reports before they have an opportunity to raise new matters that concern them. Jack Travers, the former Secretary of Federated Co-operatives Limited, has recently suggested that this rigid meeting format may have had the effect of reducing member participation and of imposing an artificial barrier between members and management. He coined the term "theatrical democracy" to describe this type of members' meeting [131]

In summary, the Act of 1913 and the standard by-laws were a valuable tool for the early development of community co-operatives in Saskatchewan, but some provisions were destined to create difficulties for some co-operatives.

There was a good deal of correspondence between Keen and Saskatchewan government officials about the 1913 Act. In particular, Keen was disappointed that co-operative retails and urban organizations were excluded from the purview of the Act. Incorporation of these co-operatives remained under the Companies Ordinance. He was also concerned about the requirement for cash only transactions [133] It is apparent that the exclusion of retails from the scope of the Act was as a result of the failure in 1913 of the Saskatchewan Purchasing Company [134] In any case, the Government had not intended the Act to be a general co-operatives statute [135] Keen concluded then the Act was a compromise but that he should not be too critical of it as he was anxious not to prejudice the passage of a federal statute [136]

Nonetheless, in his correspondence with Thomson, Keen was very critical, indicating with regret that "I am unable to say much in its favor" [137] Others were opposed to it too, and Chipman, editor of the Grain Growers' Guide, while also

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[133] Smith, note 67

[134] January 28th, 1914 letter from Keen to Thompson, supra, note 72 Vol. 12, General Correspondence, 1914 A-M

[135] January 20th, 1914 letter from Thomson to Keen Id., Vol 18 General Correspondence, 1914, M-Y See December 4th, 1913 letter from J M Hill to G F Chipman, Editor of the Grain Growers' Guide, explaining the collapse of the Saskatchewan Purchasing Company Ltd., Id.

[136] February 18th, 1914 letter from Thomson to Keen Id.

[137] January 20th, 1914 letter from Thomson to Keen Id.

[137] Supra, note 72 In this letter Keen referred to the Act as deliberately excluding co-operative retail stores and wrote By virtually excluding urban residents from forming co-operative societies, a section of the people quite as much in need of the advantages of the movement your legislature has enacted class legislation

considering it was to be supportive of the initiative indicated to Keen that he did not think that the Saskatchewan government wanted to enact any type of co operative act and that the 1913 Act was a compromise. Chipman further indicated that the "co operative spirit ... is becoming so strong that it cannot be much longer kept down."[138] Thomson's attempts to gain more support from Keen were not very successful. He stressed that the Act was a first step and that the approach taken by the Act was "both safer and more economical than the conducting of a retail business." According to Thomson the failure of the Saskatchewan Purchasing Company prompted the trading restrictions in the Act.[139] It is quite likely, however, that the restrictions were primarily a result of pressure from private business interests.[140]

Another matter that Keen thought needed attention in co-operative legislation was a definition provision to clarify what organizations the Act was intended to cover.

It is difficult to assess the impact of Keen's concerns, but it was likely considerable. He urged governments to consult with co-operatives before enacting legislative amendments[141] and Thomson sent him a copy of amendments to the Agricultural Co-operative Associations Act prior to their enactment. The 1915 amendments, for example, included changes to permit the operation of co-operative retails under the Act (although 75% of the members still had to be farmers) and made the cash business requirements less stringent.[142] Keen also attempted to interest Waldron in following other provincial examples to improve the Saskatchewan legislation.[143] There may have been competition between Keen and Saskatchewan co operators on some matters of principle and legislation. Keen was not always as involved in developments as

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138 January 20th, 1914 letter from Chipman to Keen, id.

139 January 20th, 1914 letter from Thomson to Keen, supra, note 136.

140 See December 4th, 1913 letter from Hill to Chipman, supra, note 131. Thomson advised Keen that the practice of co-operatives selling their goods at cost "stirs up endless antagonism with local merchants." See also November 3rd, 1919 letter from Thomson to Keen, supra, note 72, Vol. 51, General Correspondence, 1910 A-K.

141 December 7th, 1909 letter from Keen to the Premiers of eight provinces, supra, note 72, vol. 39, General Correspondence, 1924 H-Y.

142 September 14th and October 8th, 1915 letters from Thomson to Keen, id., January 5th, 1918 letter from Waldron to Keen, supra, note 72, Vol. 44, General Correspondence, 1918, C-2.

143 October 19th, 1923 letter from Waldron to Keen, id.

it appears he would have liked,[144] and there was some disappointment.[145] As the lawyer W.B. Francis became more involved in the process of advising the co-operatives on legislation Keen was put into contact with him.[146]

4 DEVELOPMENTS FOLLOWING THE 1913 ACT

Following enactment of the Agricultural Co-operative Associations Act, there was a wave of enthusiasm for the organization of local co-operatives. Thomson reported in April 1914 that the Co-operative Organization Branch was receiving 15 enquiries per day regarding incorporation,[147] by the end of 1914 113 associations had been registered.[148] A few of these co-operatives operated stores, but most of them were operated as local purchasing associations without a store. Local merchants and wholesalers frequently resisted the development of local co-operatives by refusing to sell to them, and farmers quickly realized they could benefit by owning their own wholesale organization.[149] At the 1914 annual convention of the S.G.G.A. it was resolved to form a trading department and to set aside $1,000 was set aside for the purpose. In its first six months of operation in 1914 the Trading Department handled $300,000 in supplies and an estimated saving to the members of $75,000.[150]

The special Act of the legislature incorporating the S.G.G.A. did not provide for trading operations,[151] and the Act was therefore amended in 1915 to allow the S.G.G.A. to carry on the business of wholesale suppliers for all commodities ordinarily used in agriculture.[151] An amendment to the Co-operative Associations Act permitted an association to enroll its shareholders, patrons, customers or associate members as

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144 January 31st, 1920 letter from Keen to Waldron, supra, note 73 Vol. 41 General Correspondence, 1920 0

145 January 14th, 1920 letter from Waldron to Kelsheimer January 16th, 1920 letter from Waldron to Keen January 20th, 1920 letter from Keen to Waldron, id.

146 February 4th, 1920 letter from Waldron to Keen, id.

147 Public Service Monthly, Regina, April 1914, vol. 2, no. 8 at 8.

148 Tenth Annual Report of the Department of Agriculture of the Province of Saskatchewan, Regina, 1914, at 100

149 Swan, note 61 at 202

150 Id., at 204

151 S.S. 1913, c. 26.

151 S.S. 1915, c. 26.

members of the S.G.G.A. and enabled the association to "enter into any arrangement for joint purchase, sharing profits, union of interests, co-operation, joint adventure, reciprocal concession or other plan to further the objects of either association." The amendment further provided that the association could sell farm supplies only to its shareholders and to members of the S.G.G.A.[153]

The law's response to common practices caused problems for co-operatives. For example, many early co-operatives purchased car lots of goods and distributed them directly from the track. In Village of Hafford v. John Gilders, the issue was whether the Hafford Agricultural Co-operative Association, of which Gilders was the secretary, was a transient trader as defined by The Village Act. The judge delivered his judgement at the Great West Hotel in Hafford on the day following the trial and found in favour of the village.[154] The result was that the co-operative required a licence to distribute goods from the track.

In the 1915 amendments the ambiguous definition of "supplies" in the 1913 Act was repealed and associations were empowered "to do anything incidental to the attainment of the said objects, and to forward the interests of farmers and ranchers in every legitimate way, and to purchase, acquire, hold and dispose of real property in Saskatchewan required for the purposes of the association, and to alienate the same at pleasure."[155] While this amendment appears on first reading to have broadened the powers of the associations, the objects contained in section 4 referred to in the amendment continued to restrict the co-operative to producing, purchasing or selling livestock, farm products or supplies on the co-operative plan." On this basis the Lorebura Grain Growers Co-operative Association Limited was prevented in 1918 from acting as a hail insurance agent.[156] and in 1920 the Deputy Attorney General advised Thomson that he had "grave doubts" whether the Act allowed a group of farmers to operate a blacksmith's shop.[157] In 1920 the Act was amended to permit co-operatives to operate community halls.[158] and in 1922 the purpose section was widened by permitting

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153 S.S. 1913 c. 27

154 This case is unreported but is referred to in a newspaper clipping in Saskatchewan Archives, supra, note 108, Call No. R-420, file 15c.

155 Supra, note 114.

156 July 15th. 1918, letter from Colclough to Thomson, id.

157 January 13th. 1920 letter from Colclough to Thomson, id.

158 S.S. 1920, c. 60.

co-operatives to establish and operate on the co-operative plan "any business for procuring and selling farm supplies or rendering services of pecuniary value to farmers ..."[159] Following this amendment, co-operatives were permitted to act as hail insurance agents.[160]

The 1913 Act had provided for dissolution of an insolvent co-operative that was still in operation, but since by the Agricultural Co-operatives Act co-operatives are deemed to be companies under The Companies Act[161] it followed that The Companies Winding-Up Act was applicable to co-operatives. Under that Act it was possible to apply to a court for a winding-up order which would be granted if the court was of the opinion that it was just and equitable to do so.[162] In 1923 The Agricultural Co-operatives Act was amended to require the liquidators acting under The Companies Winding Up Act to notify the Registrar of Agricultural Co-operative Associations of the liquidation.[163]

A. Cash Trading

The restriction to cash trading was amended in 1915 to read as follows:

> 5(4) The association shall except as hereafter provided pay for all goods purchased upon delivery. Provided that any association may purchase upon credit from any other agricultural co-operative association or any company, association or society incorporated by any special Act of the Province of Saskatchewan having objects wholly or in part similar to the agricultural co-operative associations.
>
> (5) No association shall sell its goods, wares or merchandise to its shareholders, patrons or customers except for cash. No credit shall be given.
>
> (6) The directors shall not have power to pledge the credit of the association except as aforesaid or for the purchase price or rental of business premises, salaries and incidental

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159 S.S. 1913, c. 32, s. 52, s. 1.

160 March 8th, 1926 letter from Deputy Attorney-General Golden to F.H. Auld, Deputy Minister of Agriculture, supra note 102.

161 S.S. 1913, c. 32, s. 35; S.S. 1915, c. 37, s. 6; S.S. 1923, c. 43, s. 8.

162 R.S.S. 1920, c. 35, s. 8.

163 S.S. 1923, c. 43, s. 9.

> expenses, or for moneys temporarily borrowed to pay for goods purchased or expenses incurred in connection therewith or the shipment thereof.[164]

This restriction to cash trading was a source of concern to both the managers of the co-operatives and the wholesalers. In the fall of 1919 many wholesale suppliers petitioned the provincial government to remove the restriction. They argued that they were very willing to do business with co-operatives; that the normal method of doing business was to provide credit, and that credit was generally being provided despite the restriction in the Act. They stated that they were willing to put their faith in the farmers' organizations and that farmers, the co-operatives and the suppliers would benefit from credit transactions.[165] Their cause was endorsed by H.W. Ketcheson, the manager of the Davidson Co-operative Association in a letter to the Minister of Agriculture C.A. Dunning.[166] The Minister replied in a letter three days later as follows:

> I find a somewhat divided opinion and the division of opinion seems to follow broadly the lines between the strong association such as yours and the smaller one just reaching out. So far as the wholesalers are concerned they undoubtedly do desire the cash section eliminated but I sometimes wonder if this desire is altogether in the interests of the small struggling association which a comparatively small amount of unwise debt might easily put out of business. We must bear in mind in considering this question that a very large proportion of our co-operative associations are still in a pioneer condition. Many of their managers are just beginning to acquire experience and the restriction to cash dealing in the case of an association managed by men of limited experience is not without its beneficial features.[167]

A compromise was adopted in 1922, when the Act was amended to permit a retail co-operative with a paid-up capital of at least $5,000 to pass a supplementary by-law

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164 S.S. 1913, c. 37 s. 2.

165 Saskatchewan Archives, Call No. MG, File X-6-k, supra, note 163. September 16th, 1919 letter from Ashdown Hardware; see also October 28th, 1919 letter from Greenshields Limited, at the time the largest wholesale house in Canada, to Premier Martin.

166 Id., December 24th, 1919 letter from Ketcheson to Dunning.

167 Id., December 27th, 1919 letter from Dunning to Ketcheson. At the time, the Davidson Co-operative was one of the largest and most successful in the province.

making the restrictions on credit transactions in the Act inapplicable.[168] The cash trading restriction was considered in Gnaedinger & Sons Ltd. v Turtleford Grain Growers Co-operative Association Limited.[169] The plaintiff company sold goods to the association but was not paid for them. Some of the goods were in turn sold to customers. The Saskatchewan Court of Appeal held that the intention of the Act was to prohibit credit transactions and that the contract was therefore ultra vires the association. However the court went on to hold that since the sale of goods was null and void the property in the goods remained with the plaintiff. The court held that unsold goods should be returned to the plaintiff and that the association should account to the plaintiff for the proceeds of goods already sold. The decision clearly went further than earlier cases to protect the interests of associations suppliers.

B. Powers of Associations Under the Act

In 1924 the Attorney-General was asked for an opinion as to whether a co-operative could increase its capital by increasing the par value of shares that were already sold. The Rozilee Co operative Association Limited had passed the following resolution on March 15 1917

> That the authorized capital of the Association is hereby increased from $2 000 to $20 000 by increasing the par value of the Association's 400 shares from $5 to $50.[170]

The Parkside Co-operative Association passed a similar resolution on March 7 1923. The Deputy Attorney General's opinion was that the by law was not authorized by any statute because neither the Agricultural Co operatives Act nor The Companies Act provided for an increase in the par value of individual shares because under The Companies Act, capital could only be increased by issuing new shares and because the Co operatives Act contained no provision for imposing a liability on a shareholder "greater than that which he contracted by his original purchase of shares."

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168 S.S. 1927 ch. c. 23 s. 4.

169 [1923] 1 W.W.R. 888 (Sask. C.A.)

170 February 15, 1924 letter supra, note 193

C Apportionment of Surplus

The 1913 Act set out a scheme for distribution of a co-operative's profit. After provision for a reserve fund and interest on capital, the surplus was to be divided among the patrons, whether they were shareholders or not. In 1916 an amendment restricted the division of the surplus to the shareholders unless the supplemental by-laws provided for distribution to patrons had shareholders. The 1916 amendment also permitted a co-operative by supplemental by-law to provide for patronage dividends of non-members to be accumulated by the co-operative until they amounted to the par value of a share in which case a share was to be issued.[171] A further amendment in 1918 increased the interest rate on paid up capital from 6% to 8%.[172] In 1922, the directors were permitted to retain patronage dividends until the unpaid balance of all shares was fully paid up if the supplemental by-laws so provided.[173]

In 1924 the Co-operation and Markets Branch of the Department of Agriculture had to consider several supplemental by-laws that appeared to infringe the policy of the Act. The Watrous Grain Growers Co-operative Association Limited proposed in a by-law to retain any patronage dividend that was less than 25 cents and to credit the amount to the patron or shareholder who otherwise would have received it. If that individual did not do business with the co-operative for two consecutive years, the amount in that individual's account would be transferred to the association's surplus account, with notice to the individual and a right of appeal to the Board. The Deputy Attorney-General's opinion was that the co-operative had no power under the Act to discriminate between individuals whose volume of business had been large and those whose volume of business had been small. Furthermore, the Act made no provision for the forfeiture of a patronage dividend.[174]

The Leask Co-operative Association Limited proposed to retain patronage dividends beyond the value of one share until the shareholder owned $100.00 in stock. The Deputy Attorney-General ruled that the co-operative could retain dividends only to

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171 R.S. 1940 c. 207 s. 30

172 S.S. 1918 2nd c.53 s. 7

173 March 25th, 1924 letter from Geddes to Auld, supra, note 103

174 Id.

the value of one share and that further dividends must be paid in cash. The same association had hoped to pay additional dividends in goods but this was prohibited.[175]

The Maidstone Co-operative Association Limited was incorporated in 1914 and by 1920 had issued 119 shares at a par value of $25.00 with $1.00 paid on each share. At the annual meeting on February 21st, 1920 the following resolution was passed.

> That we transfer from reserve account the sum of $2 856.00 to be added to shares 1 to 119 at the rate of $24.00 per share

The Deputy Minister of Agriculture was advised that this transaction was prohibited for two reasons. Firstly the co-operative was subject to the provisions of The Companies Act (except where that Act was inconsistent with the Agricultural Co-operative Associations Act), and a company could not invest its reserves in its own shares. Secondly the Co-operatives Act required apportionment of profits on the basis of patronage and to use the reserve fund in the manner proposed would be a contravention of that principle, since the reserve fund is made up of undistributed profits.[176]

D The 1928 Act and Amendments to 1939

In a 1928 letter to Knox Waldron recognized the following as deficiencies in the Act: some co-operatives were not operated on a co-operative basis and such operation was not required by the Act; co-operation was practically limited to the "agricultural class" because the Act required 75% of the members to be involved in agriculture and because the title co-operative was abused by private traders. He even went so far as to say that "[l]egislation or lack of it ... was the reason why associations have failed in Saskatchewan" and rather optimistically that "[n]othing will go wrong in future with amended legislation in force and the U.F.C. in touch on operation."[177]

On the question of the legitimacy of some co-operatives, or rather of enterprises masquerading as co-operatives, Knox and others recommended careful scrutiny of all applications for incorporation of co-operatives - a practice that was being followed in

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[175] November 11 1926 letter from Dingwall to Auld [id]

[176] S.S. 1911 c. 81 s. 18.

[177] April 26th, 1928 letter from Waldron to Knox [supra], note 73 Vol. 44 [General Correspondence 1930 C-E]. See also January 14th 1929 letter from Kitchener to Waldron [id] Vol. 48, General Correspondence 1930, C

Saskatchewan and Manitoba.[178] In a 1927 letter to Waldron Keen indicated that the Co-operative Union wanted to ensure that the Federal and Provincial governments pass legislation "that would end the exploitation of such words as "pool" and "co-operative" by private corporations and individuals."[179]

E. Credit Transactions

When the S.G.G.A. Trading Department was established in 1914 the Act had been amended to include the following subsection.

> 5(4) The association shall except as hereafter provided pay for all goods purchased upon delivery Provided that any association may purchase upon credit from any other agricultural co-operative association or any company association or society incorporated by any special Act of the Province of Saskatchewan having objects wholly or in part similar to the agricultural co-operative associations.[180]

The result of the amendment was that co-operatives could purchase on credit from the Trading Department of the S.G.G.A. but not from other wholesale suppliers. In the event that a co-operative was unable to meet its liabilities and ceased business the S.G.G.A. had a priority over other creditors, since the arrangements with the other creditors were ultra vires. This special treatment for the co-operative wholesaler while benefitting the Trading Department, was an irritation to the local co-operative managers and other suppliers. Opposition to the restriction on credit was led by H.W. Ketcheson, the manager of the Davidson Co-operative. He believed that the co-operatives should not be placed in a different position than the private traders since it was difficult to command the support of farmers who were refused credit at the co-operative when credit would greatly benefit them. In September 1927 Ketcheson wrote to the Minister of Agriculture to explain the difficulty the Davidson Co-operative was experiencing with some customers. He wrote:

> It is all very well to encourage cash trading and that is an ideal we should strive for. However I have been very strongly opposed to the clause in the Act which makes it impossible for an Association to force collections. In fact I think it is a reflection upon our Provincial Legislature to have any such Act. I do not think the Legislature should

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178 Circular No. 7 July 31st 1940 ml, Vol 217 Monthly Bulletins 1931-1946.

179 June 30th 1927 letter from Keen to Waldron, ml, Vol. 40, General Correspondence, 1917 A-F

180 S.S. 1913 c. 37 s. 5.

> encourage people to be crooked but still that is exactly what the Act does. There are some in the Davidson district that were looked upon as honest and had traded with the Association and paid their bills. It was not generally known in the early stages that the bills were not collectable. Later on as we grew in strength those opposed to our movement carried on a good deal of propaganda with our patrons advising that they did not have to pay their bills. A local lawyer was quite active in this. We have accounts on our books that would have been paid long ago had we been in a position to sue. As it stands a man can stand up and say "yes, I bought goods from the Co-op but they can not collect it and I am not going to pay" The Legislature says "yes, you need not pay if you do not wish to do so as we have passed legislation protecting just such guys as you."[181]

A resolution of the co-operative managers at their annual conference in 1927 called for the abolition of all restrictions on credit transactions.[182] The Co-operative Union of Canada supported the position of the managers.[183]

However, the S.G.G.A. had amalgamated in 1926 with the United Farmers of Canada (U.F.C.) to form the United Farmers of Canada (Saskatchewan Section) and this body had taken over the trading operations of the S.G.G.A. A meeting was held in Regina on December 16, 1927 to consider amendments to the Act. Five representatives of the U.F.C. - Saskatchewan Section attended, including their legal adviser W.B. Francis, four government representatives and one representative from the local co-operatives.[184] The result was that the U.F.C. position prevailed and an amendment was made to the Act concerning credit transactions.

7. THE 1928 ACT: RESTRICTION TO AGRICULTURE REMOVED

During the 1920s the Saskatchewan economy prospered, and cities and towns expanded. By 1928 it was generally believed that the benefits of co-operation should be extended to urban residents. The Executive of the Co-operative Trading Association passed a resolution reflecting this belief. The resolutions said that the Act should be amended "in such a manner that any consumers co-operative in Saskatchewan might be

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181 September 8th, 1927 letter from Kitchener to Hamilton, Saskatchewan Archives, Call No. M18, File No. 36 (1926-9) W.S. supra, note 102.

182 August 18th, 1927 letter from Baker to Hamilton, id.

183 August 30th, 1927 letter from Hamilton to Auld, id.

184 "Amendments to the Agricultural Co-operative Association Act," Undated, id.

allowed incorporation under the Act"[185] The title of the Act was changed in 1928 to be simply The Co-operative Associations Act[186] the requirement that 75% of the members be agriculturalists was repealed and all references to farmers or agriculture in the Act were removed.[187]

A Apportionment of Surplus

A "patron" previously undefined in the Act was defined as a person who purchased more than $50 worth of merchandise from an association in any one year.[188] The apportionment of surplus section was amended to provide that, after ten per cent of profits were set aside for the reserve fund and six percent interest was paid on paid up capital stock the remaining surplus be divided among the patrons in proportion to their patronage.[189] The result of this amendment was that a customer, whether a shareholder or not, would not receive a patronage dividend if he spent less than $50 at the co-operative in that year.

A new section was introduced which permitted co-operatives to provide by supplemental by-law that no interest be paid on shares. Upon such a by-law being approved by the Registrar the co-operative was required if so demanded by a shareholder holding more than one share, to repurchase for cash all shares in excess of one held by that shareholder.[190]

In 1931 section 25 was further amended to allow the association to pass supplemental by-laws to permit patronage dividends to be retained in a that a share or loan capital account (carrying interest at 6%) and amounts in the share capital account to be applied to the purchase of additional shares. A shareholder could withdraw any amount in a loan capital account after giving ninety days notice.[191]

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185 May 6th, 1928 letter from Waldron to The Secretary Co-operative Trading Assn since suing, note 2; Vol 34 General Correspondence, 1928 A S The Executive members included Ketchamm and Waldron.

186 S S 1928 c 54.

187 Id.

188 Id, s. 8 (2)

189 Id, s. 24 (2).

190 S S 1928 2d, c. 48 s. 5

191 Id., s. 48

Also in 1931 the definition of "patron" was altered to be a non shareholder purchasing over $50 worth of merchandise in the year. Patronage dividends were to be divided among "patrons and shareholders".[192] Thus, shareholders would receive a dividend even if their annual purchases amounted to less than $50.

A further amendment in 1935 permitted the members to provide by supplemental by-law that different commodities should have different scales of dividends, and that the directors could declare that no dividend would be paid on certain commodities.[193] This provision was further amended in 1936 to permit a higher scale of dividends to be paid to shareholders than to patrons. It also provided that where dividends due to a non shareholder patron had been returned for three years and had not accumulated to an amount equal to the par value of one share the patron would be offered an opportunity to claim the amount; if the dividends were not claimed, they would become the property of the association.[194]

Keen also often responded to requests from Saskatchewan government officials for information about possible federal legislation.[195] When Saskatchewan was considering the introduction of co-operative credit society legislation, Waldron approached Keen for his assistance.[196] For example, in 1932 Waldron indicated to Keen that the Saskatchewan government wanted all applications for registration under the co-operatives legislation to be submitted to Keen prior to incorporation.[197]

Keen had some say in policy matters as well. In 1932 Finlayson was interested in Keen's views on the desirability of amending the Co-operative Marketing Associations Act[198] to allow co-operative marketing associations to accept produce from non members. Finlayson thought that such a provision would offend the members of the co-

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192 S.S. 1931 c. 56

193 S.S. 1935-36 c. 56, s. 8.

194 S.S. 1936 c. 78, s. 8. See November 12th 1923 letter from Atkinson to Keen and November 19th 1923 letter from Keen to Atkinson on this point, supra, note 72, Vol. 55, General Correspondence, 1931 A-C. They were both were of the view that government intervention in the affairs of co-operatives should be as little was possible and that subject to some minimum standards, the membership should make its own decisions on such matters.

195 September 4th 1928 letter from Waldron to Keen, id.

196 October 6th 1930 letter from Waldron to Keen, id.

197 September 19th 1930 letter from Waldron to Keen, id., Vol. 56, General Correspondence, 1932 A-C.

198 R.S.S. 1930 c. 144

operative.[198] Keen's response was ambivalent. He saw both benefits and detriments in the proposal. He thought that efforts should be made to bring non-members into co-operatives "as true co-operators". However being in favour of stable legislation he considered it unwise to experiment with amendments to the Act. He also thought that the amendment could be open to abuse.[199] Finlayson agreed on this last point and considered it unlikely that the amendment would be enacted.[200]

Another issue arose at this time. Arnason contacted Keen for his views on whether retail merchants should be eligible for membership in retail co-operatives.[201] The question was posed in terms of whether this would make the co-operative a wholesale.[202] Keen did not think that co-operative legislation allowed retail merchants to be members of co-operatives; in addition he considered allowing such membership unwise and probably against co-operative principles.[203] Arnason and Keen also discussed disciplinary authority over co-operatives acting in violation of the law.[204]

In the same year, Arnason asked Keen for his opinion on the creation of a special commodity dividend for co-operatives. Keen asserted that government interference in such matters should be minimal, and in any case, that a general dividend was preferable.[205]

Arnason advised Keen of changes to the Co-operative Associations Act, made on January 7th, 1933 whereby a co-operative's supplemental by laws could provide that the

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198 January 30th, 1932 letter from Finlayson to Keen, supra, note 72, Vol. 58, General Correspondence, 1932, A-C.

199 February 2nd, 1932 letter from Keen to Finlayson, id., Vol. 58, General Correspondence, 1932, A-C.

200 February 9th, 1932 letter from Finlayson to Keen, id., Vol. 58, General Correspondence, 1932, A-C.

201 June 2nd, 1932 letter from Arnason to Keen, id., Vol. 58, General Correspondence, 1932, A-C.

202 This was the view of the Attorney-General's Department and one with which Keen agreed. See June 14th, 1932 letter from Arnason to Keen, and June 17th, 1932 letter from Keen to Arnason, id., Vol. 58, General Correspondence, 1932, A-C.

203 June 7th, 1932 letter from Keen to Arnason, id., Vol. 58, General Correspondence, 1932, A-C. The rationale would be based on the view that a retail co-operative is an association of persons for the provision of non-profit services to themselves. Membership by a merchant, for the purpose of supplying his or her store, would make the co-operative an agent for profit motivated distribution of goods to third parties (who might otherwise deal with the co-operative). I am grateful to Dr. Brett Fairbairn (Centre for the Study of Co-operatives and the Department of History, University of Saskatchewan) for pointing this out to me.

204 Id.

205 November 12th, 1932 letter from Arnason to Keen, and November 15th, 1932 letter from Keen to Arnason, id.

co-operative could cease paying interest on share capital. He also indicated that Keen's comments on other supplemental by-law provisions would receive consideration.[207] In preparing for the introduction of co-operative credit legislation, Arnason was interested in Keen's comments on the Alberta, Nova Scotia, Ontario and Manitoba Acts.[208] Keen provided an extensive commentary on the Alberta Act together with information on the Manitoba, Nova Scotia, Ontario and Québec Acts.[209] In 1934 Arnason advised Keen that amendments to the Co-operative Associations Act recommended by the CUC would be considered once the Legislature met.[210] In late 1934 Arnason again requested comments from Keen on proposed changes to the Act; these particular changes were proposed by the Consumers Refineries Co-operative Association Ltd.[211]

Keen made suggestions for amendments to the Co-operative Associations Act in late 1934 but unfortunately they were received too late. However, some of his suggestions were included in the amendments as drafted. Keen also suggested that the Act be amended to permit the incorporation of co-operatives without share capital, a proposal that was of interest to Arnason.[212] Keen also reviewed and commented on the Standard By-laws at the request of Arnason.[213]

5 Other Amendments

In 1935 the incorporation procedure was amended to give the registrar discretion as to whether to incorporate a co-operative. The words "if he approves of incorporation" were added to the subsection requiring the registrar to endorse the memorandum of association.[214] In the same year another amendment gave a co-operative the power to substitute its own by-laws for the otherwise mandatory standard by-laws, if the proposed by-laws were not inconsistent with the Act, were approved by two-thirds of the shareholders at an annual meeting or a general meeting called for the purpose and

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207 January 7th, 1933 letter from Arnason to Keen, id., Vol 68, General Correspondence, 1933, A-C

208 December 5th, 1933 letter from Arnason to Keen, id., Vol 68, General Correspondence, 1933, A-C

209 December 11th, 1933 letter from Keen to Arnason, id., Vol 68, General Correspondence, 1933, A-C

210 April 19, 1934 letter from Arnason to Keen, id., Vol 68, General Correspondence, 1933

211 December 11th, 1934 letter from Keen to Arnason, id., Vol 68, General Correspondence, 1933

212 January 16th, 1935 letter from Arnason to Keen, id., Vol 73, General Correspondence, 1935, C-I.

213 October 26th, 1935 letter from Keen to Arnason, id.

214 e.g. 1934-35, c. 55, s. 2.

were also approved by the Lieutenant Governor-in-Council.[211] This amendment was repealed in the following year.[212]

C Other Developments, 1928-1939

In 1929 the U.F.C.'s Trading Department was the nucleus of a new wholesale organization the Saskatchewan Co-operative Wholesale Society which was incorporated by a special Act of the Legislature.[213] H.W. Ketcheson, manager of the Davidson Co-operative became the manager of the wholesale.[214]

The Depression of the 1930's began on October 29, 1929 with the Wall Street crash, and had a devastating effect on the prairies in the following decade. The early 1930's brought severe drought, strong winds that blew away the soil, and a grasshopper plague. Wheat prices dropped to record lows and most farmers were in serious financial difficulty. The hardships stimulated an interest in co-operative development and particularly after 1934 many new local co-operatives were organized by wheat pool fieldmen travelling from community to community.

In 1929 trade unionists and teachers, primarily in the urban centres organized the Independent Labour Party of Saskatchewan, it formed a coalition known as the Farmer-Labour Group with the U.F.C. (Saskatchewan Section). The Group unsuccessfully contested the 1930 federal election. In 1932 the Co-operative Commonwealth Federation (C.C.F.) was formed in Calgary and held its first annual convention in Regina in July 1933. The Farmer-Labour Group joined the C.C.F. in 1935 and contested the federal election winning two seats after which the U.F.C. (Saskatchewan Section) terminated its political involvement.[215]

The Co-operation and Markets Branch of the Department of Agriculture played a major role in co-operative development in the 1930's under the leadership of the Commissioner, B.N. Arneson. In 1936 Arneson was charged with preparing credit union

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211 Id., s. 8.

212 S.S. 1930, c. 75, s. 4.

213 Supra, note 18 at 167.

214 I. MacPherson, Each for All, Toronto: Macmillan & Carleton University, 1979, at 104.

215 Supra, note 17 at 148, 151, 154, 156, 158 and 51.

legislation and welcomed Keen's input. The Act was to be based on the Nova Scotia and Prince Edward Island Acts.[220] Keen advised an adoption of the Nova Scotia Act.[221]

In 1937 the Saskatchewan government was considering amending the Co-operative Marketing Associations Act to provide for membership in a marketing co-operative on a patronage basis. That would permit co-operatives to decide that individual capital investment could be based on the volume of business done with the co-operative. There was concern about the potential confusion among the terms "members", "shareholders" and "patrons". Keen foresaw problems with putting the amendment into practice because of fluctuating volumes of an individual's purchases, he also foresaw problems with members with large families. He thought the solution was to encourage the investment of the surplus funds of each member of the co-operative at a reasonable rate of interest.[222]

In 1937 and 1938 concerns arose over the interpretation given by the tax commissioners to "member" in the Dominion Income Tax Act. Aronson was interested in any progress which CUC had made with the commissioners.[223] Keen thought that members must be admitted as members of the co-operative while shareholders were those who had been allocated a share. The mere fact of customers receiving a patronage rebate he opined would not make them shareholders.[224]

In early 1938 a committee consisting of W B Francis, Harry Fowler and Aronson was established to consider revisions of the Co-operative Associations Act. The committee wished to meet with Keen and in particular to discuss means of dealing with members whose actions are injurious to a co-operative.[225] Keen agreed to meet with the committee and sent a copy of an Ontario by-law on the subject. He thought that the mere inclusion of a power to expel members would constitute a sufficient discipline on errant members. He also felt that expulsion of members should not be left to a meeting of members. He preferred that this matter be left to the directors.[226]

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220 November 25th, 1936 letter from Aronson to Keen supra, note 72 Vol 78, General Correspondence, 1936 A-S

221 December 1st, 1936 letter from Keen to Aronson id.

222 Keen also commented on the other proposed amendments. See October 29th 1937 and December 9th 1937 letters from Keen to Aronson, id.

223 March 2nd, 1938 letter from Aronson to Keen, id., Vol. 88 General Correspondence, 1938, C-K.

224 March 7th, 1938 letter from Keen to Aronson id.

225 May 12th, 1938 letter from Aronson to Keen id.

226 May 18th 1938 letter from Keen to Aronson id.

Interest had been shown in a students' co-operative residence at the University of Saskatchewan. Registration of such an association would be possible once proposed revisions to the Co-operative Associations Act were passed permitting membership of minors in co operatives.[227]

A question arose as to whether community halls organized as a co operative barn were exempt from income tax. Keen's response to Armson indicated that while the Income Tax Act did not allow for such exemption, it could be engineered if the Saskatchewan Co-operative Associations Act was amended to allow for the incorporation of co-operatives without share capital. Then community halls could incorporate under the Act and benefit from the tax exemption under the Dominion Act.[228]

A December 29th 1921 letter from Keen in Ketchewan indicates that the Union had just won an income tax battle for co operatives.[229] Part of the argument Keen used to get the support of the Saskatchewan government for the Co-operative Union of Canada was that it could if it were better financed fight and win more battles with the Commissioners of Taxation.[230] Taxation of co-operatives was an important concern for Keen and for co operatives generally and it appears that Keen's and the CUC's efforts in this regard were very beneficial to co operatives throughout Canada.[231] Of course they did not win all battles with the Commissioners of Taxation. In 1922, for instance, an unfavourable ruling regarding the taxation of surplus carried over to reserve or to the following year's accounts was handed down.[232]

Two provisions of the 1939 Act were in direct response to discussions with income tax officials. They were a provision permitting the incorporation of co operatives

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227 November 30th, 1920 letter from Armson to Keen, Id.

228 December 11th, 1920 letter from Armson to Keen, December 13th 1920 letter from Keen to Armson, Id.

229 Id. Vol 36, General Correspondence, 1921 A-J

230 October 22nd, 1921 letter from Keen to Weldon, Id., Vol 36, General Correspondence, 1921 A-J It appears from their correspondence that the Saskatchewan government was quite useful to the Union in terms of educational and bookkeeping assistance. Further Weldon encouraged Saskatchewan co-operators to meet Keen when he visited the Province and encouraged co-operatives to affiliate with the Co-operative Union of Canada.

231 See, e.g., March 2nd, 1922 letter from Armson to Keen, March 7th, 1922 letter from Keen to Armson, Id., Vol. 38, General Correspondence, 1922 C-E.

232 October 22nd 1923 letter from Keen to the Young Grain Growers Association Ltd Id., Vol 207 Inquiries, 1919-24.

without share capital and a change dealing with the apportionment of surplus.[232] Keen pointed out the dangers of relying on the views of local taxation officials in amending the statute without obtaining a ruling from Ottawa.[234] This advice was followed and the amendment was passed. As a result community halls organized on a co-operative basis were exempt from taxation.[235]

Beginning in 1934 an annual Conference of Co-operative Trading Associations was organized to stimulate communication between co-operators, and in 1937 the first of many Co-operative Schools was organized at the University of Saskatchewan in Saskatoon.[236]

8. THE 1939 ACT

In 1938 the Co-operation and Markets Branch undertook a major study of the performance of co-operatives in the province for the period 1914-1938.[237] Following the study a new Co-operative Act was enacted.

The new Act redefined very broadly the objects for which an association could be incorporated.[238] The Act replaced the term "shareholder" with the term "member" and defined a member as a shareholder or in the case of an association without share capital as a person who had complied with the by laws of the association governing admission.[239] For the first time it was possible to operate a co-operative on a membership fee basis. Applications for membership were subject to approval by the board of directors,[240] and memberships were transferable only with the approval of the board.[241]

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232 February 6th, 1930 letter from Aronson to Keen, Id., Vol 86, General Correspondence 1929 C G

234 February 15th, 1930 letter from Keen to Aronson Id.

235 April 21st 1930 letter from Aronson to Keen, Id.

236 Supra, note 17 at 105 and 106.

237 Co-operative Purchasing Associations in the Province of Saskatchewan, Department of Agriculture, Bulletin No. 95 (Reprint) Regina (1939)

238 S.S. 1939, c. 88 at 5-7

239 Id. s. 2 (3).

240 Id. s. 17 (3)

241 Id. s. 18.

A procedure to expel members was introduced (and is still in effect) The directors could order the expulsion of a member by a two-thirds vote at a properly called meeting (provision was made for repayment of shares) The member was entitled to appeal the order at the next general meeting, where a majority of the members present could confirm or rescind the order.[243] It was not specifically stated in the Act that the member was entitled to be heard at the directors' meeting However, in the Supreme Court of Canada case of Marcotte v Société Coopérative Agricole de Ste. Rosalie, Abbott J stated that, since the Board was acting in a quasi judicial capacity the member was entitled to be heard.[243] The case might be distinguished on the basis that there was no appeal to the general membership and therefore the Board's decision was final. With the changing attitude of the Supreme Court to the principle of audi alteram partem in recent years, and with the influence of the Charter of Rights and Freedoms, it is likely that a court would hold that the member had a right to be heard at both the directors' and the general meeting. The Manitoba statute so provides.[244]

In the 1939 Act, the provisions for the apportionment of surplus required the directors, after setting aside ten per cent of the surplus for a reserve fund and paying interest on paid up capital to set aside "not more than ten per cent of the surplus as an educational or community fund."[245] This was the first time that the Rochdale principle of perpetuating the co-operative philosophy through educational works[246] was embodied in a Saskatchewan co-operative statute.

At various times prior to the passage of the 1939 Act, Keen and Waldron had discussed the co-operative principle of education. The need to disseminate information about the activities of the various co-operatives in Canada was well recognized. Co-operatives could learn a great deal from each others' successes and failures.[247] Even at the early stages of development in Canada there was concern about the inadequate attention directors and managers of co-operatives paid to education and to the need for

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241 Id., s. 30

242 [1966] S.C.R. 294

243 R.S.S. 1978 c. 47 s. 150.

244 R.S. 1939, c. 58 s. 28.

245 H. Ish, The Law of Canadian Co-operatives, Toronto: Burroughs 1982 at 6.

246 See, e.g., February 10th, 1933 letter from Keen to Waldron, supra, note 71 Vol 30, General Correspondence 1933, A-H

education funds.[248] Keen pointed out that it "seems almost impossible to get societies to see that money spent in co-operative education is not only money well spent but absolutely imperative for the welfare of the movement."[249] On a similar point Keen also voiced concerns about the "lack of a sense of responsibility and of appreciation of our principles by the directors" and about managers who know "nothing of and [are] not interested in co-operative philosophy from which all permanent economic success arises."[250]

The new Act provided that the association could be dissolved by a three-fourths vote of the members at any duly constituted meeting called for the purpose of considering the resolution.[251] Presumably that meant a three fourths vote of the members actually attending the meeting. That provision replaced the requirement that three fourths of the shareholders living within 35 miles of the head office sign the resolution.

The Co-operation and Markets Branch conducted a thorough study of the effect of customer credit on the co-operatives[252] but no significant amendment was made to the credit provisions of the Act.

9 AMENDMENTS TO THE STANDARD BY-LAWS BETWEEN 1914 AND 1950

The Standard By laws drafted in 1914 were amended in 1927 1937 1939 and 1942 It has not been possible to determine the particular circumstances which led to these amendments and it is probable that any documents concerning these amendments have now been lost

However there are a few exceptions including two letters from Keen to Armson containing detailed comments on the Standard By-laws.[253] He questioned the need for annual meetings of all co-operatives to be held in January of each year the duplication

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248 July 14th, 1923 letter from Keen to Walshaw Id.

249 July 26th, 1923 letter from Keen to Walshaw Id.

250 March 18th, 1926 letter from Keen to Booth Vol 69 Id., General Correspondence, 1926 A-B These exact same issues continue to be raised in 1988

251 S.S. 1920, c. 56, s. 28

252 Supra note 234 Part V

253 October 20th, 1926 letter from Keen to Armson, supra note 72 Vol 75, General Correspondence, 1926 See also September 11th and 20th 1926 letters from Keen to Armson Id., Vol. 76 General Correspondence 1926 A.-C.

in giving notice of meetings to members directly and in a local newspaper and the prohibition against a member being an auditor of a co-operative. Keen seemed to have envisaged directors overseeing the operations and management of co-operatives in some detail for he considered it desirable for boards to comprise many committees (including grocery, drygoods and hardware committees). As a consequence, he was in favour of boards of directors being comprised of at least six members and not more than twelve. He thought that there should be a minimum patronage requirement for eligibility for election to the board of directors and that it was worthwhile to consider disqualifying directors who were in arrears with payments to the co-operative. He thought that disloyalty by a director, defined as including doing business with a competitor of the co-operative when it could have been carried out with the co-operative, should be grounds for disqualification. Keen also thought that it might be desirable to take the drastic step of denying voting rights to members who made purchases below a fixed amount per annum. He raised the issues of the appointment of auditors, their and secretaries' duties and the quorum at meetings. While these comments cannot be treated as agreed to by all co-operators, they are issues that were raised by an influential co-operator. As such, they illustrate some of the concerns that gave rise to changes in the by-laws over time.

Keen considered that a vacancy on the board of directors should be filled by the unsuccessful candidate with the most votes at the last annual meeting at which there was a directors' election, with that person holding office until the next annual meeting. He saw this as preferable to the board arbitrarily filling the vacancy.

Other background on changes to the Standard By-laws includes later correspondence among Arneson, Keen, Fowler, Francis and McCaig.[114] This dealt with such matters as the first general meeting of a co-operative, deferral of annual meetings, members requisitioning meetings, quorum at meetings, nomination of candidates for the board of directors, number and removal of directors, bonding of officers, meeting credentials, retirement of members, statutory reserves, the election of auditors and the powers of the Registrar.

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114 February 2nd, 1941, August 6th, 1941 and April 1st, 1942, letters from Arneson to Keen, February 11th, 1941, September 9th, 1941 and October 4th, 1943 letters from Keen to Arneson, May 14th, 1941 letter from Francis to Arneson, June 2nd, 1941, letter from Fowler to Arneson; May 28th, 1943, letter from McCaig (President, Saskatchewan Co-operative Wholesale Ltd. to Arneson, Id., Vol 102, General Correspondence, 1941, C-I, Vol. 105, General Correspondence, 1942, A-C; Vol. 108, General Correspondence 1943 A-C.

In 1927 Article VIII of the Standard By laws was amended by inclusion of a section entitled "Advice" [265] It was suggested that every association should pass by-laws dealing with the following matters

> (1) Regulating the manner in which calls may be made on the unpaid portion of shares, and providing penalties for nonpayment of such calls
>
> (2) Providing how patronage dividends shall be paid to nonshareholder patrons e.g. whether paid in cash or credited on account for capital stock.
>
> (3) Providing such rules as may be required for the regulation of the business of the association and defining any special duties which may be assigned to any officer or servant of the association

These administrative matters had probably caused problems for some associations The advice section also included a set of suggested supplemental by-laws, and an offer by the Registrar to provide to any proposed association, free of charge, a set of suitable by laws on being informed in detail of the nature of the proposed association's business

The provisions concerning meetings were amended in 1937 [266] 1939[267] and 1942 [268] Prior to 1937 only annual and special meetings were provided for but in that year the following section was added under Article 2:

> 3 Other General Meetings. — In addition to the annual meeting a general meeting of the association may be held quarterly or half yearly or at such other time and at such hour and place as may be determined by the directors.

In 1939 a section was added stating that the association could hold a semi-annual meeting in June or July "For the purpose of reviewing the financial results the progress and problems or any business of the association"

Clearly the intention of these amendments was to stimulate greater member involvement in co-operatives business affairs. However the quorum for any

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265 Standard By-laws Governing Agricultural Co-operative Associations, Saskatchewan Gazette (1927) Order in Council dated June 23th, 1927 Article VIII

266 Standard By laws approved by O C 265/37 on March 8th 1938 Saskatchewan Gazette, (1937)

267 Standard By laws approved by O C.M 9/39 on September 5th 1939 Saskatchewan Gazette, (1939)

268 Standard By-laws approved by O C.333/42 on June 1st 1942 Saskatchewan Gazette, (1942)

membership meeting was reduced in 1937 from one-fifth of the members to one-tenth of the members living within twenty miles of the head office. In 1939 this was changed to ten members or one tenth of the number of members, whichever was less.

In 1939 more comprehensive provisions were made concerning procedures and duties of the board of directors. Provision was also made for an executive committee of the directors and for special committees to perform special duties. Of particular interest was a new section concerning membership administration.

> 7 The directors shall keep the members informed regarding the business of the association and encourage interest, discussion and support on the part of the members. The directors shall develop and foster a sense of ownership and responsibility on the part of the membership by the following:
>
> 1. By presentation of periodic reports regarding the conditions of the business, the operation of various business policies, by publicising the activities of the association in the local press and in other ways,
>
> 2. By arrangement of business and educational meetings of the association as frequently as conditions warrant;
>
> 3. By maintaining direct and personal contact with members to explain the business and progress of the association and solicit their support;
>
> 4. By encouraging active participation in the affairs of the association at meetings and by the appointment of special committees of the members where feasible and publicising the activities of such committees;
>
> 5. By encouraging the organization of study and discussion groups regarding the principles and practices of co-operation and dissemination of co-operative literature;
>
> 6. By identifying with and lending the support of the association to the social, educational and economic problems and affairs of the community to the extent that this does not interfere with the main objects for which the association is organised;

> 7 By affiliation with or the support of other co-operative associations to foster the development of the co-operative movement.

This section had two effects. It clearly set out the duties of a co-operative director and it also imposed upon the board a statutory obligation to perform those duties. At common law a director is expected to demonstrate the degree of skill that may reasonably be expected from a person of his or her knowledge and experience. The purpose of the section was to raise the standard of performance of boards of directors, by including specific provisions in the standard by-laws. It could be argued that the directors were made aware of their precise duties and that the common law standard of performance was thereby raised. Clearly, provincial officials hoped to improve directors' performance and thereby increase members' involvement in their co-operatives.

In 1941 Arnason and Keen discussed an amendment to the Co-operative Associations Act that would allow co-operatives to adopt a "revolving door plan" of financing. The committee felt that this had already been provided for in the new Act. Keen felt that the wording of section 25 of the new Act - "subject to the provisions of the by-laws" - did not give the co-operative power to vary the terms of the Act. He did feel that Arnason's argument that section 10 allowed for the adoption of the revolving door plan for financing was stronger because of the words "notwithstanding anything in the Act contained". He considered it odd, however, that a co-operative could enact a valid by-law which would conflict with the specific requirements of the Act.[359] According to Francis, changes in the Standard By-laws were proposed in 1941 mainly to improve clarity and consistency.[360] McCaig showed particular interest in provisions regarding the nomination of directors and control over their conduct.[361] The revisions to the Standard By-laws also gave considerable latitude to co-operatives on the subject of holding their annual meeting and to new co-operatives regarding holding their first general meeting.[362] Keen was concerned that the Standard By-laws were becoming too lengthy and too rigid, having the effect of placing co-operatives in a strait jacket. He

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359 February 3rd 1941 letter from Arnason to Keen. February 11th, 1941 letter from Keen to Arnason, supra, note 71. Vol. 103, General Correspondence, 1941, C I.

360 May 14th 1941 letter from W.D. Francis, Id.

361 May 31th 1941 letter from J. McCaig, Saskatchewan Co-operative Wholesale Society Ltd., Id. Fowler considered that a good job had been done in the revision.

362 August 6th, 1941 letter from Arnason to Keen, Id.

felt that as much latitude as is reasonably justifiable should be given to individual co-operatives.[265]

In 1942 Keen was concerned about the supplemental by law regarding retirement of members — he thought it was ultra vires the Act. Arnason was interested in Keen's reasons and asked for his comments on the statutory reserve.[266] This latter point continued to be of interest into 1943. Arnason thought that allocation of the statutory reserve should not be encouraged.[267]

16 AMENDMENTS TO THE CO-OPERATIVE ASSOCIATIONS ACT 1944-1950

In June 1944 a C.C.F. government was elected in Saskatchewan with a large majority and a stated enthusiasm for co-operative development. T.C. Douglas became Premier and L.F. McIntosh was the first minister of the new Department of Co-operation and Co-operative Development.[268] Douglas formed an economic advisory committee chaired by G.E. Britnell and an Economic Advisory and Planning Board with George W. Cadbury a British economist and member of the British Labour party as its chair. Cadbury advised the Cabinet on economic and co-operative development.[269]

The new C.C.F. government did not immediately make major amendments to co-operative legislation. In the first session of the legislature in the fall of 1944, only a very minor amendment to the Act was made.[270] following correspondence between the Registrar, the Deputy Attorney-General, W.B. Francis and others.[271]

In 1944 the question of retaining patronage dividends was much debated. Arnason and Keen discussed a co-operative retaining a member's patronage dividends and placing them in the member's credit in a share capital account until it amounted to the value of a share and then issuing a share to that member. Arnason was concerned about the desirability of such a provision and even about whether it would be authorized by the

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[265] September 9th, 1941 letter from Keen to Arnason, id.

[266] April 1st, 1942 letter from Arnason to Keen, id., Vol. 108, General Correspondence, 1943 A-C.

[267] October 4th, 1943 letter from Arnason to Keen, id., Vol. 109, General Correspondence, 1943, A-C.

[268] John H. Archer, Saskatchewan: A History, Western Producer Prairie Books, Saskatoon, 1980, at 395.

[269] Id., at 374.

[270] S.S. 1944 (2nd Session) c. 44.

[271] October 19th, 1944 letter from Blackwood to McIntosh, supra, note 102.

Standard By-laws.[270] Keen thought that returning of patronage dividends would be permissible under the by-laws existing at the time although he doubted the legality of issuing of share capital in a manner not in accordance with usual practice. In terms of co-operative practice, Keen thought it unwise to encourage a policy whereby people were recognized as members when they had not specifically sought membership.[271]

It would appear that Keen viewed legislative activity of the provincial and federal legislatures as potentially damaging. In other words, he had no illusions about the attitude of governments towards co-operatives. In one graphic example, he asked all members of the CUC to keep track of legislative developments in their provinces and asked them to "bring to our notice legislation calculated immediately to affect the interests of co-operative societies when it is being introduced."[272] For example, it was not until amendments were made to Saskatchewan's Pharmacy Act in 1946 that co-operatives had the right to operate pharmacies.[273] Keen was quick to point out the positive effects of the CUC's interventions. For example, he took the credit for staving off changes to the Criminal Code which would have "prohibited the payment of purchase dividends by co-operative societies in Canada."[274]

In 1946 a number of minor amendments were made. Their general thrust was to make the directors' previously absolute discretion to decide certain matters subject to "such conditions as may be set forth in the by-laws."[275] The maximum interest payable on loan or share capital was reduced from 6% to 5% (and remained at that level until 1953).[276] Also the maximum percentage of the surplus to be set aside for an educational or community fund was reduced from ten to five percent.[277]

In 1947 more extensive and important amendments were made to the Act. The Registrar was given increased authority to decide in any particular instance whether the

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270 December 27th, 1944 letter from Arneson to Keen, supra, note 72, Vol. 116, General Correspondence, 1944, E-G

271 January 4th, 1941 letter from Keen to Arneson, Id., Vol. 121, General Correspondence, 1941 C-F

272 Circular No. 3, March 31, 1938, id., Vol. 317 Monthly Bulletins, 1938 45.

273 Sask. Druggists Concerned over Co-ops Rebate Plans, Drug Merchandising, June 1st, 1946, at 32

274 Circular No. 3, 1937 supra, note 272.

275 S.S. 1946, c. 68 ss. 6, 7 (i).

276 Id., s. 7

277 Id., s. 8

reincorporation of a co-operative was economically advisable or otherwise feasible.[178] Co-operatives were permitted to pass supplemental by-laws which were not consistent with the standard bylaws, provided they were approved by the Registrar.[179] This measure was passed in recognition of the diverse membership and extent of co-operatives' operations in the province.[180]

In 1946 a community association dissolved and the shareholders wished to divide the assets amounting to $2,500 amongst themselves. The Act did not permit any part of the surplus to be paid to shareholders as interest or dividends but it did not clearly state the method for disposing of a surplus at dissolution.[181] At the suggestion of Mr. Blackwood, the Deputy Attorney-General, the legislature amended the Act to provide that the surplus at dissolution of a community association "shall be used for the purpose of providing services for social welfare, health, civic improvement, education or for other objects of a benevolent or charitable nature."[182] The restrictions on credit transactions were reduced slightly by a provision that, where an association had paid up capital over $5,000, the members could pass a special resolution, supported by three-quarters of the members present at an annual or a special meeting, to permit sales on credit.[183] Previously the resolution required the signatures of two-thirds of the shareholders living within 20 miles of the head office.[184] The Registrar was aware that many associations were conducting credit transactions without legal authority and he hoped to legitimize these transactions by passing suitable supplementary by-laws.[185] The provision establishing an educational or community fund, first passed in 1939, was repealed.[186] The Registrar suggested that such expenses should be paid out of the

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178 S.S. 1947, c. 72, s. 6.

179 Id., s. 7.

180 June 20th, 1947 letter from the Registrar to secretaries of co-operative associations, Saskatchewan Archives, Call No. 90, File 90(g) supra, note 108.

181 October 30th, 1946 letter from Blackwood to Arnason, id.

182 S.S. 1947, c. 72, s. 8.

183 Id., s. 9.

184 S.S. 1939, c. 48, s. 24.

185 Supra, note 181, at 2.

186 S.S. 1947, c. 72, s.10.

association's operating expenses rather than out of its surplus.[387] Following the amendment no minimum or maximum amount was required to be spent on member education or community work.

In 1948, only minor amendments were made to the Act.[388] In 1949 amendments were passed concerning the associations retaining patronage dividends as share capital. One such amendment stated that, where the supplementary by laws required the purchase of additional shares from patronage dividends one share could be issued to the spouse of the member on the written request of that member and the spouse then became a member.[389] Thus it became possible for a spouse to become a member against his or her wishes! Also in 1949 provision was made for the amalgamation of co-operatives.[390]

11 THE CO-OPERATIVE ASSOCIATIONS ACT 1950

In 1948 and 1950 a major revision of the Co-operative Associations Act was undertaken. The Registrar prepared a draft of the proposed new Act that a committee of the Co-operative Union of Saskatchewan revised. The committee sent the revised draft to co-operative leaders and other government officials for further comment. George Cadbury of the Economic Advisory and Planning Board,[391] E F Scharf, the editor of The Co-operative Consumer,[392] and Hon. T.J. Bentley[393] all made a number of suggestions.

The revised Act was much longer than previous Acts because it was intended to fulfill three distinct purposes. Firstly, it was intended to be a comprehensive statement of the law as it affected co-operatives. The Registrar wished to avoid reliance on The Companies Act as much as possible. Secondly the Act was intended as a guide or

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387 Supra, note 386 at 3.

388 S.S. 1948, c. 67.

389 Id.

390 Id., c. 7.

391 December 23rd, 1949 letter from Cadbury to Douglas, Saskatchewan Archives, T.C. Douglas collection, Call No. R-33 I, File 10. supra, note 102.

392 January 20th, 1950 letter from Scharf to Arneson, Saskatchewan Archives, Call No. R-, File 10(g) 1.

393 Supra, note 386. February 8th, 1950 letter from Bentley to Douglas, Id. See also Recommendations of C.U.S. December 17, 1949, id.

handbook for the 967 associations then incorporated. Thirdly, it was drafted to deal with new types of co-operatives that were emerging.[204]

The new Act provided a definition of "co-operative basis" for the first time:

> 2(4) "Co-operative basis" means the carrying on of an enterprise organized, operated and administered in accordance with the following principles and methods:
>
> (a) each member or delegate one vote;
>
> (b) no voting by proxy;
>
> (c) race, creed or political beliefs no bar to membership;
>
> (d) services primarily for members;
>
> (e) interest on share capital not to exceed five per cent per annum;
>
> (f) services to members and patrons as nearly as possible at cost, in that:
>
> (i) savings or surpluses arising from yearly operations are paid to members or members and patrons in proportion to patronage, use or contribution, after provision for operating expenses and valuation reserves, subject to the bylaws, or;
>
> (ii) in the case of community service associations as defined in Part IV savings or surpluses are placed to reserve for maintenance or improvement of services provided by the enterprise, or donated for community welfare, and no patronage dividends or interest or dividends on share capital are paid.[205]

The definition was intended as a general guide to co-operative principles and as a basis for deciding whether to register a new association or whether to strike an existing association from the Register.[206] Generally co-operative leaders approved of the definition.

The new Act continued to distinguish between "members" and "patrons" despite the objection of E.F. Scharf who believed that there was no necessity for any reference

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[204] December 7th, 1946 letter from Amason to Douglas, Id.

[205] S.S. 1960, c. 68, s. 2 (4)

[206] Supra, note 203

to "patrons" in the Act.[297] A "patron" was defined as "a person not a member but using the services of the association to such extent as may be provided in the by-laws."[298] A patron was entitled (under the definition of "co-operative basis") to a share of any surplus where the by-laws so provided.

Following a recommendation of the Co-operative Farming Conference[299] the Registrar had intended to make three the minimum number of members required to incorporate a co-operative. However the C.U.S. thought that the number should remain at five (Cadbury also wanted a higher minimum), and Arnason heeded the advice and left the minimum at five, with an exception for production associations which could have three incorporators.[300] In a letter to the Premier, Arnason mentioned that as a matter of policy a retail consumer co-operative would not be incorporated if less than thirty members supported it.[301]

The new Act included a number of sections concerning administration and the board of directors that were previously included in the standard by-laws. Some provisions from The Companies Act referring to such matters as contracts and conflict were incorporated.

The Act also included a series of special sections concerning particular types of co-operatives. The sections that concerned consumers co-operatives dealt particularly with the problem of credit transactions. The minimum paid-up member capital required before a supplementary by-law approved by a special resolution could permit sales on credit was increased from $5,000 to $10,000.[302] The Act attempted to delineate the responsibilities of the directors and employees of the association with respect to ultra vires credit sales. The Act stated that where the directors authorized a credit transaction that was not permitted under the Act, and if the association so requested, the directors would be personally responsible for any loss incurred by the association as a result of the transaction. The extent of the personal liability was restricted to the amount of their

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297 Supra, note 295 at 3

298 S.S. 1950, c. 95, s. 2 (f)

299 Supra, note 296

300 S.S. 1950, c. 95, ss. 5 (1) and 76.

301 Supra, note 296. See also December 28th, 1949 letter from Arnason to Douglas, supra, note 292

302 S.S. 1950 c. 95 s. 88.

investments in the co-operative.[305] It became an offence under the Act for an officer or an employee of a consumers association to purchase or sell goods on credit, except in accordance with the instructions of the directors.[306] E.F. Scharf, writing in the Co-operative Consumer, was concerned that this provision interfered unnecessarily with the employment relationship between the associations and their employees,[307] but the Registrar chose to leave the section in the new Act.

The following section was introduced concerning the qualifications of directors:

> 72. A consumers association may by supplemental by-law provide that no member shall be eligible for election as director if any amount owing by him is in arrear or if he has failed to purchase or obtain from the association during its preceding fiscal year goods, wares or merchandise of such value as may be mentioned in the by-law.[308]

E.F. Scharf objected strongly to this provision. He said that it served no useful purpose and contravened the democratic principle of co-operatives. In a letter to the Registrar he said, "It would constitute, in my opinion, a sort of fascist tendency in a co-operative organization."[309] George Cadbury was of the same opinion,[310] but the section remained.

Part III of the Act dealt with "production associations" and was based on the experience gained up to 1950 with co-operative farming associations.

Part IV was concerned with community service associations and contained provisions concerning them that resembled those in earlier legislation.

Part V was entirely new and concerned housing associations. At that time they were an emerging form of co-operative and the Department had only limited experience with them. Part VI, dealing with federations, was based on the previous Act. A new set of standard by-laws was also drafted to accompany the new Act.[311]

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305 Id., s.69

306 Id., s.70

307 Scharf, note 298 at 2.

308 S.S. 1950, c. 66, s. 72.

309 Scharf, note 298 at 1

310 Scharf, note 298

311 Standard Bylaws approved by O.C. 1809/50 on September 30th, 1950. Saskatchewan Gazette, 1950

12 AMENDMENTS TO THE CO-OPERATIVE ASSOCIATIONS ACT 1950-1960

The Act was next amended in 1952. A new section required every association except community service associations to provide all members annually with a statement of their share capital or other amounts to their credit, and with the amount credited to them from the surplus in the most recent fiscal year.[810]

The provision allowing one share to be assigned to a spouse from retained patronage dividends where the supplemental by-laws permitted it was re-enacted so that a supplemental by-law was no longer required. On August 1, 1952 the Registrar wrote to all secretaries of co-operatives to explain the new amendments, and advised them that the assignment of a share to a spouse was at the request of the transferor and with the approval of the transferee.[811] In fact, this does not appear to have been the case. No provision was passed requiring the consent of the transferee and the phrase "on the written request of the member" that appeared when the measure was introduced in 1949 was left out of the revised Act in 1950 and was not included in the 1952 amendment. Thus, the assignment could in theory legally be made without the approval of either spouse, though it is clear from the Registrar's letter that that was not the intended result.

The 1952 amendments also provided that where a special resolution had been passed to permit credit purchases or sales, the resolution became void if the co-operative's paid-up capital fell below the statutory minimum required for such a resolution.[812]

Further amendments were made in 1953 at the suggestion of C.U.S. except that the Co-operative Union had requested the abolition of restrictions on credit transactions and Premier Douglas's government could not see its way to supporting that proposal (Douglas was the Minister of Co-operation and Co-operative Development from 1949 to 1960).[813] The amendment enabled co-operatives with supplemental by-laws permitting

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810 S.S. 1952, c. 60, s. 9.

811 August 1st, 1952 letter from the Registrar to Secretaries of co-operatives, Saskatchewan Archives, C.U.S. Collection, Call No. 130, File 10(g) minor, note 180.

812 S.S. 1952, c. 60, ss. 16 & 17

813 February 11th, 1953 letter from Arnason to Lloyd, (Woodrow Lloyd's brother and President of C.U.S.) Saskatchewan Archives, minor, note 180

credit transactions to pass by laws restricting the amount of such transactions and confining them to particular classes of goods designated in the by-law.[314]

Other amendments required the directors of a consumers' association to examine the condition of the business regularly to prepare inventory at least semi-annually and to examine all credit transactions regularly to ensure that they were in conformity with the Act.[315]

In November 1953, a meeting held between C.U.S. and Department officials[316] resulted in further amendments to the Act in 1954. The provisions that had previously appeared in the standard by-laws concerning withdrawal of members were revised and included in the Act. Also allowance was made for meetings of members by districts.[317]

Further insignificant amendments to the Act were made in 1956,[318] 1957[319] and 1959.[320]

13 THE CO-OPERATIVE ASSOCIATIONS ACT 1960

In 1959 the Department of Co-operation and Co-operative Development decided to undertake a further major review of the Act, and W. Hamilton, the Executive Secretary of C.U.S., sent a circular letter to all co-operative associations and to Federated Co-operatives Limited (F.C.L.) requesting that the co-operatives consider the present legislation and make suggestions for amendments that would facilitate co-operative development.[321] There were a number of replies including one from the Archerwill Co-operative Association Limited in which the secretary commented that he believed that it was the first time that the local co-operatives had been invited to comment on the legislation under which they operated.[322] The most prominent concern

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314 S.S. 1952, c. 31 s. 9.

315 Id., s. 7.

316 Minutes of meeting held on November 25th, 1953, Saskatchewan Archives, supra, note 102.

317 S.S. 1954, c. 46, ss. 7 & 8.

318 S.S. 1956, c. 48.

319 S.S. 1957, c. 48.

320 S.S. 1959, c. 1.

321 May 21st, 1959 letter from Hamilton to Secretaries of co-operatives, Saskatchewan Archives, supra, note 102, C.U.S. Collection, Call No. Ec. F5a 96.

322 June 16th, 1959 letter from Archerwill Co-operative Association Limited to Hamilton, Id.

expressed in the responses were that there should be no limit on the authorized share capital as this caused bureaucratic delays when co-operatives wished to expand their services, that spouses of members should automatically have full membership rights and as usual that credit restrictions should be abolished. Mr T.P. Bolt, the Locals' Finance and Control Director, made the following comment concerning the credit restrictions:

> Although the thought behind these three sections dealing with sales on credit is most admirable, they appear to be impractical. We say impractical because doing business requires some granting of credit and these sections of the Act have had little effect on those associations that have continued to abuse the practice of exceeding credit. Some associations have attempted to register a credit by-law but because of their present accounts receivable position the registrar has not seen fit to register same. It would appear that we are doing nothing more here than forcing these locals to continue to operate outside the requirements of the Act.[323]

With the support of FCL and CUS, restrictions on credit transactions were abolished in the revisions of 1960; finally, a principle that dated back to the Rochdale Pioneers and had caused difficulties for local associations since 1914 was eliminated. After 1960 the local co-operatives were free to enact their own credit restrictions.[324]

One of the most vexing problems facing the Registrar in 1960 was that of spouses' memberships. It will be recalled that the Act had previously provided that where one spouse had accumulated more than one share from retained patronage dividends, a share could be transferred to the other spouse with the approval of the directors. It was generally believed that both spouses must approve the transfer, though this was not made clear in the Act.

H.L. Fowler, the President of FCL, made the following comments on this problem in a letter to W. Hamilton.

> Then there is the age-old question of what might be termed "dual membership." Section 32 could be made to read that both husband and wife are members without the necessity of one having to transfer shares to the other. The Municipal Act has similar provisions, and The Co-operatives Act could have it too, but there has always been a resistance.

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323 July 2nd 1959 letter from F.C.L. to Hamilton of C.U.S. ibid.

324 S.S. 1960 c. 74 s. 67 (a).

> It is not good enough to say that the present Act is workable and that all you have to do is The fact is that it has not done and I have been at two annual meetings this year Saskatoon and one other where this thing was one "holy schmozzle" and a disgrace to the co-operative movement [324]

After considering the above comment, the Deputy Minister B.N Arnason drafted the following proposed by law and sent it to L.L. Lloyd, the President of C U.S.

> an association may by supplemental by law provide that the wife of any member in good standing shall have the right to vote at annual or special meetings of the association even though she is not the holder of a share or has not paid a membership fee [326]

Ultimately, this was not considered to be satisfactory and the resulting amendment closely resembled the previous provision. The new provision stated that where a married member had acquired more than one share one share could be transferred to the spouse at the written request of the spouse and with the approval of the board of directors. Also a married couple who owned or purchased two shares could apply for joint membership [327]

In 1960, the phrase "patronage dividend" was changed to "patronage refund" presumably to avoid any suggestion that it was a profit from investment and therefore taxable. The term "patronage refund" is a more accurate description. Also the proportion of the surplus required to be set aside in a reserve fund by a consumer co-operative was reduced from ten per cent to five per cent [328] The Act also included a new section listing uses to which the fund could be put [329] Another minor amendment reduced the minimum number of directors for a community service association production association, housing association or federation to three [330]

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325 June 17th, 1958 letter from Fowler to Hamilton, supra, note 323.

326 June 11th, 1959 Letter from Arnason to Lloyd Id.

327 S.S. 1960, c. 74, s. 29

328 Id., s. 72.

329 Id., s.73.

330 Id., ss. 71, 76, 85 and 95.

14 CONCLUSIONS

This paper's concentration on the development of co operative law in Saskatchewan is justified by the Co-operative Movement being and having been, in the words of George Keen "much more highly and extensively developed in Saskatchewan than in any other province."[331]

It was recognized early that the particular conditions of the Canadian west required different approaches to the co-operative principles which were after all derived from consumer co-operatives operating in working class urban England. In one letter George Keen wrote:

> We are agreed that special conditions of the west militate against the carrying out of Co-operative principles as to the personal attendance of the members at meetings and that we shall be under the necessity of adapting ourselves to conditions as we find them.[332]

An account of the unfolding of co operative law in Saskatchewan provides a window on the achievements of co-operators who saw the need to ensure that they had more control over their economic destiny than private businesses operating in the province were prepared to allow them.[333] These co-operators achieved a great deal, as is exhibited by the size strength and importance of co-operatives to Saskatchewan's economic mosaic. Partly as a result of the efforts these co operators, the economy of Saskatchewan is quite different to that of other Canadian provinces.

The development of co-operatives in Saskatchewan has left an important legacy. The law applicable to co-operatives could and can help or hinder their development, as it can constitute a neutral force. The nature of appropriate legislation given rise to disagreements amongst co-operative activists to this day and can be expected to continue to do so in the future. The law as developed however should be seen as a monument to

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331 July 31st 1940 Circular No. 7 Id.

332 May 8th 1911 letter from Keen to The Saskatchewan Purchasing Company supra, note 73 Vol. 8 General Correspondence, 1911 M Z. October 11th 1911 letter from Keen to Waldron Id., Vol. 34 General Correspondence, 1925 A C November 20th 1920 letter from Keen to Waldron Id., Vol. 30, General Correspondence, 1923 A H See also April 11th 1921 letter from Keen to Waldron Id., Vol. 34, General Correspondence 1925, A C It was also difficult for co-operatives to obtain competent legal advice because lawyers, more used to dealing with private traders, were not well aware of the application of law to co operatives See e.g., May 3rd, 1911 letter from Keen to Ketcheson Id., Vol. 30 General Correspondence 1923 A-I

333 For an account of the history of Quebec co-operative law see C Gregoire, L'Evolution Ou La Legislation Cooperative Quebecois (1971), 4 Rev. du Canadian [illegible] R.J.E.C. 35

a desire to achieve another way of organizing economic activity with a concentration on people, democratic values and community purposes which emphasises service rather than profit. In the face of the intense opposition from the turn of the century to today this must be seen as an incredible achievement.

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A HISTORY OF SASKATCHEWAN
CO-OPERATIVE LAW - 1900 TO 1960

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and David Brown

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A HISTORY OF SASKATCHEWAN CO-OPERATIVE LAW - 1908 TO 1960

BY DONALD MULLORD, CHRISTOPHER S. AXWORTHY AND DAVID LISTON*

1 INTRODUCTION

This paper traces the history of Co-operative Law in Saskatchewan, from the time before Saskatchewan was a province to 1960. In doing so, it attempts to give the tenor of the discussions among co-operators in Saskatchewan about what the applicable statutes should prescribe, and to describe the concerns the provincial government had when it considered the enactment of amendments. Studying the case of Saskatchewan co-operative law is instructive because of the pre-eminence, outside of Quebec, of Saskatchewan as a "co-operative province". In this capacity, it gradually became influential in setting the course of legislation for other provinces.

The history of Saskatchewan law begins with the English model that was transported to Canada prior to Saskatchewan's provincehood. It should be remembered that the U.K. co-operative model was predicated on consumer co-operatives and that adaptations were therefore necessary to accommodate a movement more oriented to producer co-operatives.

2 EARLY ENGLISH STATUTES

When England's first successful co-operative society, the Rochdale Equitable Pioneers Society, was organised in 1844, there was no suitable legislation by which such a society could incorporate. The Joint Stock Companies Act had been passed in 1844,[1] enabling joint stock businesses with 25 members or more to be granted incorporation by the Board of Trade without recourse to a special private Act of Parliament, as had previously been the case. However, the 1844 Act did not grant limited liability and the procedure required was too expensive for a small co-operative society.[2]

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1 Joint Stock Companies Act, 7 & 8 Vict. c. 110.

2 G.D.H. Cole, A Century of Co-operation, Allen & Unwin, 1944, at 110.

The Rochdale Pioneers applied for enrolment under the Friendly Societies Acts of 1834 and 1842.[3] The Friendly Societies Act had been first passed by Parliament in 1793 to encourage working people to form charitable societies to benefit the sick and infirm, and thus to reduce public expenditures.[4] The preamble to the Act stated:

> Whereas the protection and encouragement of friendly societies in this kingdom, for raising, by voluntary subscription of the members thereof, separate funds for the mutual relief of the said members in sickness, old age and infirmity, is likely to be attended with beneficial effects, by promoting the happiness of individuals, and at the same time diminishing the public burdens;[5]

The Act required that the societies be organized democratically. The members were to assemble from time to time to "constitute such proper and wholesome rules orders and regulations ..." for the government of the society.[6] These rules were to be submitted to the Justices at Quarter Sessions for approval,[7] and once approved, they could only be altered by the consent of three-quarters of the members at a general meeting, where notice of the amendment to the rules had been given at two prior general meetings.[8] The 1793 Act also allowed the society's rules to provide for the resolution of disputes between the society and its members by arbitration.[9] This provision was continued in the later Industrial and Provident Societies Act. The 1793 Act restricted the societies to charitable activities, but the Act was amended frequently in the following years, and in 1834 the scope of the Act was broadened to allow Friendly Societies to be organized "for any purpose which is not illegal."[10] This phrase apparently enabled trading societies to be registered under the Act but the general wording created uncertainty as to which activities were permitted. In 1846 as a result of lobbying

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3 Id. at 88

4 Friendly Societies Act, 33 Geo. 3 c. 54

5 Id., preamble.

6 Id.

7 Id., s. 2.

8 Id., s. 3

9 Id., s. 16.

10 Amendment to Friendly Societies Act, 4 & 5 Will. 4 c. 40

by the Rochdale Pioneers and influential co-operative sympathizers, the Friendly Societies Act was amended to include the following "frugal investment" clause:

> Be it enacted ... that a society may be established ... For the frugal investment of the savings of the members for better enabling them to purchase food, firing, clothes, or other necessaries, or the tools or implements of their trade or calling, or to provide for the education of their children or kindred, with or without the assistance of charitable donations. Provided always, that the shares in any such investment society shall not be transferable, and that the investment of each member shall accumulate or be employed for the sole benefit of the member ...[11]

Though pleased with this amendment, co-operators viewed the restrictions that registration under the Friendly Societies Act imposed on trading societies' activities as unnecessary. For example, the societies could hold personal property only through non-member trustees and they could not own land, reserves could only be invested with the National Debt Commissions and there was no provision for federation of the societies.[13] Dissatisfied with their legal status, the societies lobbied for further changes to the Act, this led, in 1852, to the first statute specifically drafted to provide for producer and consumer co-operation - The Industrial and Provident Societies Act.[15]

A. The Industrial and Provident Societies Act, 1852

The title of the Act, which is still used today, reflects the belief that the working men's trading societies would serve a charitable purpose. The margin note to section 1 reads "Societies of working men may be established for attaining the objects of Friendly Societies Acts by means of joint trade."[14] Trading surpluses were to be used for "such provident purposes ... as shall be from time to time authorized by the laws in force with respect to Friendly Societies."[15] Societies would continue to be regulated by the Registrar of Friendly Societies,[16] and by section 7 of the Act, "all the provisions of the laws

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11 Amendment to Friendly Societies Act, 9 & 10 Vict. c. 27

13 Supra, note 3

15 Industrial and Provident Societies Act, 15 & 16 Vict., c. 31.

14 Id. s. 1

15 Id., s. 2

16 Id., s. 6

relating to Friendly Societies shall apply to every Society to be constituted under this Act."[17]

Section 1 of the 1852 Act, adopted into early Canadian co-operative statutes, outlines the purposes for which societies could be organized:

> I. It shall be lawful for any number of persons to establish a society under the provisions of this and the said recited Act, for the purpose of raising by voluntary subscriptions of the members thereof a fund for attaining any purpose or object for the time being authorised by the laws in force with respect to Friendly Societies, or by this Act, by carrying on or exercising in common any labour, trade or handicraft, or several labours, trades or handicrafts, except the working of mines, minerals or quarries beyond the limits of the United Kingdom of Great Britain and Ireland, and also except the business of banking, whether in the said United Kingdom or elsewhere; [18]

The section indicates that co-operative societies were not limited to retail trading and that worker co-operatives of tradesmen were also contemplated. Like the Friendly Societies, these co-operatives were to raise capital through voluntary subscription and it has been suggested that worker co-operatives were not as successful in England as retail consumer co-operatives because of the difficulty of raising the necessary capital from the workers themselves.[19]

Section 2 of the Act listed matters for which the Rules of the society should provide. Interest on loans was not to exceed 6 per cent, and the value of loans was not to exceed four times the amount of the paid up subscriptions. Dividends on subscriptions were not to exceed 5 per cent (thus providing a different interest rate for loan capital than member capital), and no dividends were to be paid out of the society's capital. Any surplus was to be used firstly to repay loans, and then either for increasing capital, for provident purposes under the Friendly Societies Act, or for a patronage refund. The Rules were also to provide for the appointment of managers and other officers, the making of contracts, procedures for withdrawal of members and the

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17 Id., s. 7

18 Id., s. 1

19 See generally the criticisms of Sidney and Beatrice Webb, discussed in R. Oakeshott, The Case for Worker Co-ops, Routledge & Kegan Paul, London, 1978, at 51-41; J. Thornely, Workers' Co-operatives, John And Dugmore, Heinemann, London, 1981, at 26-29.

arbitration of disputes, and the method of dissolution of the society.[20] The Act did not provide a procedure for adopting these rules, but it is probable that this was not considered necessary since the Friendly Societies Acts provided for democratic control by the members or a committee of members.

Section 3 stated that members' interest was not transferable.[21] This was an important restriction, since it prevented control of the societies from passing into the hands of persons who were not the societies' patrons.

Section 9 of the Act limited a member's interest member to one hundred pounds.[22] Section 11 stated that the liability of members was unlimited.[23] This was a significant deterrent to working-class investors, but it could be circumvented to some degree by vesting property absolutely in the hands of trustees.[24] It is not surprising, however, that limited liability was withheld from the co-operative societies in 1852, since it was not extended to companies until 1855. In that year Parliament enacted the Joint Stock Companies Act,[25] which for the first time limited the liability of the shareholders to the amount unpaid on their shares.[26] This Act was the model for company legislation in England and Canada for over a hundred years.

The Industrial and Provident Societies Act was extensively revised in 1862[27] to include several of the provisions made for joint stock companies in the 1855 Act. For example, the 1855 Act provided that the minimum number of persons that could form a limited liability company was seven and that the association could be formed "for any lawful purpose".[28] Similarily, the 1862 Act required a minimum of seven persons to form a society, and stated that societies could be formed for any purpose permitted by law.

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20 Supra, note 15, s. 2.

21 Id., s. 3.

22 Id., s. 9.

23 Id., s. 11.

24 Supra, note 2 at 188.

25 Joint Stock Companies Act, 19 & 20 Vict. c. 47.

26 Id., s. 61.

27 25 & 26 Vict., c. 87.

28 Supra, note 25, s. 9.

except mining, quarrying and banking.[29] Both Acts limited shareholders' liability to the value of their shares,[30] but in consideration of that privilege, both societies and companies were required to have a registered office to which notices and communications could be addressed,[31] and to paint or affix an easily legible sign in a conspicuous position on every office or place of business.[32] Stiff penalties for non-compliance were included in both Acts.[33] The 1855 Act prohibited a company from registering under a name identical to that of a subsisting company or so nearly resembling such a name as to be "calculated to deceive".[34] This provision was broadened in the 1862 Act to prohibit names that were "likely to deceive".[35] The Friendly Societies Acts, previously applicable to co-operative societies in toto, were made applicable only to exemption from stamp duties and income tax, settlement of disputes by arbitration or justices, compensation of members unjustly excluded, the power of the courts in the case of fraud, and the jurisdiction of the Registrar of Friendly Societies.[36] Comprehensive provisions in the 1855 Act for winding up companies were made applicable to societies.[37]

The 1862 Act did not follow the 1855 Joint Stock Companies Act in providing for general and special meetings of shareholders or for a comprehensive schedule of regulations for managing the company. The 1862 Industrial and Provident Societies Act was less precise in its requirements. The Rules of a society were to be registered with the Registrar of Friendly Societies,[38] and were to be available to any person on payment of a sum not exceeding one shilling.[39] The Act included a schedule of matters for which

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29 Supra, note 27, s. 3

30 Supra, note 25, s. 25 supra, note 27, s. 20

31 Supra, note 25, s. 39 supra, note 27, s. 12

32 Supra, note 25, s. 50 supra, note 27, s. 10.

33 Supra, note 25, s. 51 supra, note 27, s. 11

34 Supra, note 25, s. 4

35 Supra, note 27, s. 9

36 Id., s. 16.

37 Id., s. 17

38 Id., s. 8

39 Id., s. 7

the Rules were to provide For example, they were to provide for the mode of holding meetings and right of voting, and for making or altering rules The frequency of meetings was not prescribed and the principle of one member-one vote was not specifically included The specific restrictions in the 1852 Act on the interest to be paid on loans or members' subscriptions was dropped in favour of a general statement that the Rules were to provide for "the mode of application of profits" The overall effect of the 1862 Act was to remove some of the restrictions on the societies under the previous Act, and to treat the societies as commercial businesses rather than as special kinds of social or charitable institution

B. The Co-operative Principles of the Rochdale Pioneers

The Rochdale Equitable Pioneers Society evolved a set of principles for co-operative societies The Pioneers did not commit these principles to a written list, and it is probable that they evolved over a period of years Consequently, different authorities quote different "principles," and in recent years there has been some debate about the actual number of Rochdale Principles W B. Francis, writing in 1959 lists nine principles that he regards as fundamental for co-operative ventures:

1 Democratic control: one member, one vote
2 Limited interest on capital
3 Patronage dividends
4 Unlimited membership
5 No credit, business on a cash basis
6 Educational work.
7 Political and religious neutrality
8 Goods and services of high standard
9 Co-operatives sell goods or provide services at the market price.[40]

It is interesting to note that while the Industrial and Provident Societies Act of 1852 referred to limited interest on capital and patronage dividends, the 1862 Act does not refer specifically to any of the principles The purpose of the 1862 Act appears to be to regulate the interaction of the society with other businesses and with the government, but to leave internal management to the society and its members. Since most of the co-operative principles are concerned with the co-operatives' internal management they were not incorporated into the legislation of 1862.

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40 W B Francis Canadian Co-operative Law, Toronto: Carswell 1959 at 8

3 EARLY CANADIAN CO-OPERATIVE LAW

A The First Canadian Co-operative Statute

In 1865, the Ontario legislature passed an Act Respecting Co-operative Associations[41] closely modelled on the Industrial and Provident Societies Act of 1862. The purposes for which an association could be organized were much like those set out in the 1862 Act[42] as were the conditions under which an association could commence operations. Before it could do so, it was to frame a set of rules for regulating, governing and managing the association. The rules were to provide for the following matters.
a) mode of convening general and special meetings and of altering rules,
b) provisions for the audit of accounts,
c) power and mode of withdrawal of members and provisions for the claims of executors or administrators of members,
d) mode of application of profits,
e) appointment of managers and other officers, and their respective powers and remuneration, and provisions for filling vacancies occasioned by death, resignation and other causes.[43]

The 1865 Act does not distinguish between general meetings and special meetings but in 1861 the province of Canada had passed The Joint Stock Companies General Clauses Consolidation Act,[44] which did distinguish between the two. A special meeting was defined as a meeting called by one fourth part in value of the shareholders of the company, for the transaction of any business specified in the notice of the meeting.[45] Since Section 1 of the Companies Act provided.

> 1 When not otherwise expressly enacted this Act shall apply to every joint stock company incorporated by any Act hereafter to be passed, for any of the following purposes: ..[46]

it is possible that the drafters of the 1865 Act intended that the distinction used in the Companies Act would be applied to co-operatives.

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41 Co-operative Associations Act, S O 1865, c 22

42 Id., s. 1.

43 Id., s. 5

44 S O 1861, c 18

45 Id., s 13.

46 Id., s. 1.

The complete title of the 1865 Co-operatives Associations Act was "An Act to authorize the formation of companies or co-operative associations for the purpose of carrying on in common any trade or business." The distinction between "companies" and "co-operative associations" is not explained in the Act. However, section 2 of the 1861 Companies Act stated:

> 2. For the purpose of incorporating this Act, or any of its provisions with a special Act, it shall be sufficient in such Act to enact that the clauses of this Act, or such of them as in such Act maybe particularly designed to that end, shall be incorporated with such Act [47]

However, the drafters of the Co-operative Associations Act did not specifically incorporate the provisions of The Joint Stock Companies Act, and so it could be argued that the meanings of "general meeting" and "special meeting" in the Act were not incorporated into the 1865 Act.

Another possible interpretation of the words "special meeting" is suggested by section 7, which prescribes the manner of altering the rules:

> 7. After such rules have been certified it shall be lawful for such Association, by resolutions, at a meeting specially called for that purpose, to alter, amend or rescind the same or any of them or to make new rules [48]

Possibly it was intended that a special meeting was one called to alter the rules.

The 1865 Act included two of the Rochdale Principles: elections were to be by ballot, and each member was to have only one vote.[49] Also, the association's business was to be conducted strictly on a cash basis, no credit was to be given or taken.[50] This last provision was the only one to give rise to reported litigation.

B. Early Cases Concerning Cash Trading

The Rochdale Pioneers imposed the restriction on their society that trading be on a cash basis only because some of the them remembered that an earlier attempt to form a co-operative store in Rochdale had failed when it overextended credit to members who

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47 Id., s. 2.

48 Supra, note 41, s.7.

49 Id., s. 11.

50 Id., s. 15.

could not afford to buy groceries.[51] The restriction became a constant source of difficulty for co-operatives in the following one hundred years and the principle was eventually abolished.

The first reported case in Canada under a co-operative statute concerned cash trading.[52] By the latter half of the nineteenth century, the London Co-operative Association Limited regularly purchased goods from the plaintiff, the transaction was considered to be for cash if payment was made within thirty days. The invoices were placed before a board meeting of the trustees and if found to be correct, were paid by the treasurer. The plaintiff brought action when the co-operative failed to pay invoices to the value of $895.80. Counsel for the co-operative argued that the transaction was not for cash, and that therefore the plaintiffs could not recover. Section 15 of the Co-operative Associations Act stated:

> 15. The business of the Association shall be a cash business exclusively: no credit shall be either given or taken, and no officer, member or servant of the Assocation or any number of them together shall have power to contract any debt whatever in its name, except in respect of rent on the premises required for the business, the salary of clerks and servants, and such like contract necessary in the management of the affairs of the Association; everything shall be bought and sold for cash only.[53]

It was held that the co-operative could not incur any debt whatever, except as provided in Section 15, and that it was therefore incapable of incurring any liability. The Act provided for publicity of the character of co-operative associations, and parties transacting business with them should enquire as to their powers and liabilities. The court held that for a valid transaction, there must be either prepayment or simultaneous delivery and payment.

The principle of cash trading under the Ontario statute was considered again in Ontario Co-operative Stone Cutters' Association v. Clarke et al.[54] The defendant had a contract with the Dominion government to construct a section of the Welland Canal, and subcontracted with the plaintiff to build the canal's stone walls. The defendant did not carry out its contract with the Government, and the plaintiff, unable to perform its part

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51 Cole, supra, note 2.

52 Fitzgerald et al v. London Co-operative Association Limited (1868) 27 U C Q B 605.

53 Supra, note 41, s. 15.

54 (1870) 31 U C C P 280.

of the contract, brought action for loss of profit. The defendant claimed that it was not liable under the contract because it was not a cash transaction and argued that Fitzgerald v London Co-operative Association[55] supported its contention that the co-operative could not enter into any contract except for cash. The court observed that section 1 of the Act permits the association to carry on "any labour, trade or business" and held that a contract necessary to carry on a "labour" or "trade" was to be distinguished from contracts of buying and selling. The court stated that the restriction to cash transactions applied only to buying and selling, and that the contract at issue in this case was necessary for managing the Association's affairs and was therefore specifically excepted in the Act.

The courts again considered the effect of the cash trading restriction in 1897 in Struthers v Mackenzie.[56] The Wyoming Co-operative Association regularly purchased on credit from the plaintiffs, R C Struthers & Co. The plaintiffs were unable to recover against the co-operative, and brought action against the manager, the treasurer and the directors personally. They argued that there was an implied representation or warranty of authority in law of the association to purchase goods on credit. The court held that the plaintiffs must be taken to have known that the defendant co-operative association was such, and must have known of the statutory restriction on credit sales. Thus the plaintiffs and the defendants had equal knowledge of the legal restriction, and there could be no implied representation or warranty. The plaintiffs also argued that the defendants had benefited by reselling the goods, and should account for the value of them. The court came to the rather odd conclusion on this issue that the defendants had used the proceeds from the plaintiff's goods to relieve the defendants from a personal liability for other goods purchased by the association, and had not therefore derived a personal benefit from the goods.

C. Manitoba Co-operative Associations Act, 1887

Little appears to be known about early consumer co-operatives in western Canada, but it is probable that the increased settlement of the prairies after 1880 brought with it settlers who were aware of co-operative developments in England and eastern Canada. It is known that there was a co-operative store in operation at Winnipeg, because on May

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55 Supra, note 52.

56 (1897) 28 O R 381 (Div Ct.)

13th, 1885 the Winnipeg Co-operative Association placed an advertisement in the Winnipeg Daily Sun.[57]

In 1887 the Manitoba Legislature passed an Act Respecting Co-operative Associations,[58] perhaps in response to the needs of small groups such as the Winnipeg association. The Act was almost identical to the Ontario Act, which had been slightly amended in 1880[59] and 1884.[60] According to Trevena, there may have been a few incorporations under the Act, but it was generally forgotten until 1913.

4 EARLY CO-OPERATIVE DEVELOPMENT IN SASKATCHEWAN

A Saskatchewan Prior to 1913

The first co-operative organisation to appear on the prairies. The Patrons of Industry, was founded in Michigan in 1887 and spread rapidly to Ontario and then in 1891 to Manitoba. The organization was at its most successful in 1895, when there were 330 lodges with a membership of about 5,000 in western Canada.[61] The main purpose of the Patrons of Industry was to improve the economic position of the settlers by co-operation. The local lodges placed sufficiently large orders with a department store to obtain discounts. The County Association pooled orders from the lodges for enough supplies to fill a boxcar. When the car arrived in Regina, the supplies were distributed from the track to farmers who drove in to collect them.[62] The Patrons entered federal politics in 1896 but only one Patron member, Dr. Douglas from Eastern Assiniboia was elected, the organisation disintegrated because of disagreements among the leaders after the election.[63]

In 1896, two brothers attempted to establish a utopian, co-operative community near Tantallon, on the Qu'Appelle River. The preamble to the Constitution explained their purpose:

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57 J. Trevena, Prairie Co-operation: A Diary, Saskatoon: Co-operative College of Canada, 1976, at 65.

58 S.M. 1887, c. 12.

59 S.O. 1880, c. 22.

60 S.O. 1884, c. 27.

61 B.S. Patton, Grain Growers Co-operation in Western Canada, Cambridge, Harvard University Press, 1928, at 33.

62 J. Hawkes, Saskatchewan and Its People, Regina: The S.J. Clarke Publishing Company, 1924, at 618.

63 Id., at 620.

> Feeling that the present competitive social system is one of injustice and fraud and directly opposed to the precepts laid down by our Saviour for the guidance of mankind in subduing all the forces of nature and the evils springing from selfishness in the human heart, we do write under the name of the "Harmony Industrial Association" for the purpose of acquiring land to build homes for its members to produce from nature sufficient to insure its members against want and the fear of want
>
> To own and operate factories, mills, stores, etc To provide educational and recreative facilities to the highest order and to maintain harmonious relations on the basis of co-operation for the benefit of its members and all mankind in general [64]

The membership grew to about fifty people, they operated a blacksmith shop a carpentry shop, a laundry and lime kilns, and produced flour and butter The community was not as successful as the founders had anticipated partly because a railway that was expected was never constructed, and in 1900 the community was harmoniously dissolved

Political lobbying in Ottawa by Dr Douglas led to the enactment of The Manitoba Grain Act in 1900.[65] This Act was intended to palliate the difficulties western grain farmers were having with the C P R -private elevator monopoly By the Act farmers had the legal right to obtain railway cars directly, and to load them either over loading platforms or through flat warehouses, they no longer had to depend on the line elevator companies However, the railways were unable to move a large portion of the record crop in 1901 before freeze up at the Lakehead, and both businessmen and farmers were indignant W.R Motherwell, a farmer from Indian Head who had observed the failure of the Patrons of Industry in the 1890's, organized the Territorial Grain Growers Association (T G G A) with the object of uniting farmers to counter the dominance of the private grain-handling interests [66] The Association successfully lobbied to enforce farmers' rights under the Manitoba Grain Act, and obtained amendments to the Act favourable to farmers [67] The Province of Saskatchewan was created in 1905, and in the

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64 H Johnson The Harmony Industrial Association, (1951) 4 Saskatchewan History at 11

65 Supra, note 61 at 20 – 24

66 Id. at 33.

67 W.A Mackintosh Agricultural Co-operation in Western Canada, Toronto Ryerson Press 1924 at 14

following year the name of the T G G A was changed to the Saskatchewan Grain Growers Association (S G G A)

In 1904, E A Partridge, a Saskatoon farmer, proposed at a T G G A meeting that a farmers' company be formed to sell grain co-operatively [68] He believed that a farmers' company operating in the commission market at the Winnipeg Grain Exchange would be a financial success and would eliminate price fixing by the private grain companies The grain growers' association did not initially support Partridge's proposal, but in 1906 Partridge and a group of Saskatoon grain growers formed the Grain Growers Grain Co Ltd. (G G G C.). The new company quickly obtained a seat at the Exchange, and despite great hostility from the private trade and an expulsion order that had to be reversed by the Manitoba government, the G G G C succeeded in maintaining its position at the Exchange By 1912 the company had 27,000 farmer-members and was selling 28 million bushels of grain annually [69] The company recognized that farmers sell products at wholesale prices but generally purchase as retail consumers The company considered entering the business of farm supply purchasing in addition to its regular business of grain marketing, [70] but did not do so until 1913

B The Role of The Co-operative Union and of George Keen

The Co-operative Union of Canada was formed on March 6th, 1909, largely on the initiative of George Keen, then President of an Ontario co-operative [71] This was to have a profound effect on the development of co-operatives and co-operative law in Saskatchewan and elsewhere in Canada. The Co-operative Union was instituted to

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68 Id., at 18

69 Ian MacPherson The Co-operative Movement on the Prairies, 1900-1955 "Canadian Historical Association Booklet No. 38 Ottawa, 1979 at 6

70 Supra, note 61 at 281

71 Ian MacPherson Building And Protecting The Co-operative Movement, A Brief History of The Co-operative Union of Canada, 1909 1984 CUC Ottawa, undated at 2

promote co-operatives and co-operation in general but for the purposes of this paper, one object set out in its by-laws is of particular interest By-law 2(e) read as follows,[72]

> to protect the interests of the co-operative movement by action whenever necessary as to Federal legislation and administration and through the provincial or regional sections as to provincial legislation and administration

This by-law indicates that the Co-operative Union was organized with regional and provincial sections to better enable it to fulfil its mandate [73] Keen's view was that the provincial sections of the CUC should be expected to "exercise more influence in provincial legislatures than can be expected by the Dominion executives and officials "[74] Keen also warned provincial sections to "carefully watch Bills which are introduced into Provincial legislative assemblies and particularly by private trade organizations Action against co-operators in that field are not likely to be frontal attacks It will be by indirection The word "co-operative" will not appear"[75]

From the time of his appointment as the first General Secretary of the Union in 1909 and for over thirty five years thereafter Keen corresponded prolifically with Saskatchewan co-operatives and co-operators. He dispensed advice and assistance on many matters of importance to co-operatives, including co-operative legislation He made regular trips to Saskatchewan to consult co-operators and he built up a close relationship with the Co-operatives and Marketing Branch of the Saskatchewan Department of Agriculture, especially with W W Waldron and his successor B N

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72 Co operative Union of Canada, Public Archives of Canada Call No MG 28 I 18 Vol 1 By laws of the Co operative Union of Canada The failure to obtain the passage of Federal co-operatives legislation was very much on the minds of the first activists in the Co-operative Union This concern continued for a very long period of time At least at the 1933 1936 1937 and 1939 Congresses for example, a resolution was passed calling on the Federal government to introduce legislation on co operatives and urging each of the provincial governments to introduce co operative credit legislation and to amend their various statutes dealing with co-operatives to permit co-operatives in one province to operate branches in other provinces up to a distance of ten miles away from the interprovincial boundary Dissatisfaction with the legislative regime is illustrated by the fact that when Canadian Co-operative Implements Ltd was established in 1940 it was incorporated under the Companies Act, 1934 See October 26th, 1918 letter from Waldron to Keen id., Vol. 37 General Correspondence 1918 C-D

73 However the Public Archives show that the CUC's presence in Saskatchewan was often regarded as unsatisfactory It appears too that the provincial sections either did not work well or were non-existent See e g , the Congresses of 1930 1932 id., Vol 2 Congresses 1919 1929 1930, 1932 1933, 1938 It was not until the 1936 Congress in Toronto that a resolution was passed to establish a Saskatchewan section of the CUC

74 Circular from Keen to affiliated co-operatives, July 31st 1936 id

75 Directive from Keen National Co-operative Re-organization, 1941 id.

Arnason. The Branch assisted with Keen's visits to Saskatchewan and its officials had frequent meetings with him when he was in the Province. Waldron even urged co-operative retails to join the CUC.[76] Keen's assistance in the push for co-operative legislation in Saskatchewan is well documented.[77]

C Progress in the West

In 1911, the G G G C. obtained a new federal charter by special Act of Parliament[78] in order to broaden its territorial scope and operations. The Act incorporated several co-operative features. Stockholders were required to be farmers, farm owners or farmers' wives; individual stockholdings were restricted to a value of $1,000, each shareholder had only one vote, and surpluses could be distributed on other than a share basis.[79] The objects of the company were couched in very broad terms:

> To produce, manufacture, export, import, buy, sell, deal in, and deal with all cereals ... and all products or by-products of the farm, and all machinery, implements, goods, wares, and merchandise which may be used in the production and manufacture of the products of the farm, and all articles, substances and things which may be utilized in the said product or in the maintenance, cultivation, improvement and development of farms.[80]

The Act passed in the House despite considerable opposition from members sympathetic to the interests of retail merchants.[81] The company had a strong central organisation, but for it to operate an effective farm supply business, organisation at local centres was necessary.[82] In 1912, the company leased the Manitoba government elevators with the intention of using the elevator system to distribute farm supplies.[83] In 1913, the

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76 November 28th, 1930 letter from Waldron to Keen, Id., Vol. 52, General Correspondence 1930 C-H.

77 See e.g. correspondence between Keen and the Saskatchewan Registrar of Joint Stock Companies, Id., Vol. 2, General Correspondence 1908-1909.

78 9 G. 1911, c. 60.

79 Id., ss. 4, 5, 6, 8, 17.

80 Id., s. 12.

81 Supra, note 61, at 155.

82 Id., at 282.

83 Id., at 268.

Co-operative Supply Department was established in Winnipeg, and initially supplied flour, feed, coal and apples. In 1913-14, 8,926 tons of apples and 5,336 barrels of apples were supplied. In 1914, lumber, binder twine, fencing and farm implements were added.[84]

Under pressure from the Manitoba Grain Growers Association, the government of Manitoba in 1910 established a system of government-owned elevators.[85] The farmers anticipated that this move would result in better terms for farmers selling grain, but the government system did not receive sufficient support from farmers and lost large sums of money in its two years of operation. The Manitoba government appeared to be relieved to lease the system to the G.G.G.C. in 1912. In Saskatchewan, pressure from farmers for a government-owned elevator system resulted in a Royal Commission to study their situation, and the Commission recommended that a co-operative farmer-owned and locally controlled elevator company be set up with government assistance.[86] The government accepted the Commission's recommendations, and in 1911 the Saskatchewan Co-operative Elevator Company was incorporated by a special Act of the Legislature.[87] The company was successful, and in 1913 the Alberta Legislature passed a similar Act to incorporate the Alberta Farmers' Co-operative Elevator Company.[88] The Alberta Act, in addition to empowering the company to operate a line of elevators and to deal in grain, also provided that the company could engage in the supply of goods and chattels to farmers,[89] the Alberta company immediately commenced a co-operative supply department.

In Saskatchewan, co-operative trading was initiated differently. In 1913, the Provincial government established a Royal Commission to investigate the high cost and difficulty of obtaining agricultural credit. The Commission, in an extensive report, considered the problem of agricultural credit, but also addressed broader problems facing

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84 Id., at 285.

85 Supra, note 61 at 79-89.

86 Report of the Elevator Commission, Regina 1913.

87 Saskatchewan Co-operative Elevator Act, S.S. 1911 c. 39.

88 Alberta Farmers Co-operative Elevator Act, S.A. 1913 c. 13.

89 Id., s. 5.

the rural economy[90] The solution proposed by the commissioners was the encouragement of co-operative effort They stated.

> In view of the changing conditions of our economic life, the Commissioners believe that a solution to our problems must be sought along two lines, which after all do not greater [sic] differ
>
> 1 The spread of co-operative effort especially at present in the direction of selling and purchasing
>
> 2. The fostering of financial institutions of our own with sympathies for our own problems and control by our own people[91]

The first recommendation of the Commission was as follows

> 1. That, inasmuch as in the experience of older communities cheaper agricultural credit is invariably associated intimately with other phases of agricultural co-operation, such additional legislation be enacted by the Legislature and information and guidance provided by the government as will further facilitate on the part of the farmers of the province the establishment on a sound basis of a system of local and central rural co operative societies for purchasing and selling farm products and supplies[92]

The government responded by establishing the Co-operative Organisation Branch within the Department of Agriculture "to foster in every legitimate way co-operative organisation of farmers for purposes of production, marketing and purchasing of supplies"[93] The first Director of the Branch was W W Thomson an agriculture graduate who had studied agricultural co-operation in the other provinces, some U S. states and Europe[94] The legislature also passed two statutes in response to the Commission's report The Saskatchewan Co-operative Farm Mortgage Association Act[95]

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90 Report of the Agricultural Credit Commission of the Province of Saskatchewan, Regina, 1913.

91 Id., at 204

92 Id., at 217

93 Annual Report, Co-operative Organizations Branch, 1945 at 9.

94 Public Service Monthly October 1913 at 19

95 S.S 1913 c. 61

and the Agricultural Co-operative Associations Act.[96] Prior to 1913, some local groups had been formed to order carloads of supplies co-operatively The purpose of the Agricultural Co-operatives Associations Act was to provide legal status for such associations and to simplify incorporation procedures for new associations Even though prior to the enactment of co-operative legislation co-operatives could only be incorporated under the Companies Acts,[97] model co-operative by-laws for such incorporation were a long time coming, as they were for co-operatives that did not qualify for incorporation under the Agricultural Co-operatives Associations Act.[98]

5 THE SASKATCHEWAN AGRICULTURAL CO-OPERATIVE ASSOCIATIONS ACT, 1913

The Act provided that five or more persons could incorporate an association "for the purpose of producing, purchasing or selling livestock, farm products or supplies on the co-operative plan".[99] "Supplies" was defined as "building and fencing material, fuel flour, feed and such other commodities as may be shipped in car lots and distributed from a warehouse; the word shall not be interpreted as applying to a retail business".[100] This definition immediately gave rise to uncertainty as to the restriction it imposed on the associations For example, was it necessary to ship "building and fencing material, fuel, flour and feed" in carlots, or did this restriction apply only to "commodities"? The Deputy Attorney-General T A Colclough sent his interpretation of the definition to the W W Thomson, Registrar of Agricultural Co-operative Associations, in a letter dated April 14th, 1914.[101] He observed that the Interpretation Act required that the expression "may" in a statute should be construed as permissive, but concluded that to do so would not give a sensible meaning, and that the word should therefore be considered as

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96 S.S 1913 c 62

97 1901 c 28, as am.

98 A December 1913 letter from Keen to John Corbett of Gull Lake indicated that a model set of by laws was not available although it appeared to be the practice for established co operatives to send copies of their by-laws to new societies supra, note 72 Vol. 11 General Correspondence 1913 A L The reason for this given by Keen was that "we have no definite statute for the whole Dominion." Letter from Keen to S Smith of Star City Saskatchewan, id., Vol. 12 General Correspondence 1913 M Y Standard By-laws did become available from the Department of Agriculture in 1914

99 Supra, note 97 s 4.

100 Id., s. 2(c)

101 April 24th 1914 letter from T.A. Colclough to W W Thomson Director Co-operative Organizations Saskatchewan Department of Agriculture Saskatchewan Archives Call No 423 box 1

imperative. He further concluded that "as may be shipped in carlots" related only to "commodities," and therefore that "building and fencing materials, fuel, flour [and] feed" need not be shipped in carlots. Furthermore, a carlot of "commodities" need not consist of an entire carlot of one commodity, but could contain a number of different commodities. In all cases, however, Colclough was of the view that supplies must be purchased in greater than retail quantities.

The restriction to cash trading espoused by the Rochdale Pioneers and included in the earlier Ontario Act was made applicable to associations in Saskatchewan. An exception permitted associations to purchase on credit real estate to be occupied as business premises, and to take out a mortgage to secure the unpaid balance.[102]

The Act initially required that seventy five per cent of the shareholders be "agriculturists",[103] thereby effectively preventing the organization of co-operatives in urban centres or amongst industrial workers.[104] The liability of a shareholder to the creditors of the association was limited to the unpaid balance on his shares.[105] At meetings each shareholder was entitled to one vote, and voting by proxy was prohibited.[106] The association was required to send to the Registrar of Co-operative Associations, each January, an annual return including an audited financial statement for the previous year up to the 31st of December. The return was also to be provided free of charge to any shareholder on request.[107]

A formula was provided for apportion an association's profits. First, the directors were to set aside not less than 10% of the net profits for a reserve fund, until the fund

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102 Supra, note 97 s. 5

103 Id., s. 8.

104 Cf. December 31st letter from Thomson to Keen, supra, note 72. General Correspondence, Vol. 13, 1913. T. M. Thomson noted that "the Act is designed primarily to aid agricultural co-operative associations but as 25% of the shareholders in any association may belong to the urban population its operation is by no means confined exclusively to the farming community." It appears however that Thomson thought that farming communities were more likely to have people experienced in business than would urban groups looking to form co-operatives. Consequently it was safer to encourage co-operatives in rural areas than in urban areas. He wrote: "Any restrictions placed on the business of associations will I trust prove not a check to their developments but rather a safeguard which will prevent many failures which would otherwise result from placing inexperienced men in charge of complicated business concerns." There was also a recognition, on the part of Thomson, that there was a considerable need to develop the "co-operative spirit" among the people of Saskatchewan.

105 Supra, note 97 s. 12.

106 Id., s. 14.

107 Id., s. 15.

had amounted to at least thirty per cent of the paid-up capital stock. Then six per cent interest was to be paid on the paid-up capital stock. The remainder of the profits was to be divided among the patrons (whether shareholders or not) in proportion to the volume of business conducted by each patron with the association. A proviso permitted the association to retain the patronage dividend of a patron who was not a shareholder until the par value of one share had accumulated when a share certificate was to be issued to the patron.[108] The Act does not refer to "membership" and it must be inferred that there is no distinction between a shareholder and a member of the association. The standard by-laws approved pursuant to the Act provide that either the directors or "not less than one-fifth of the shareholders" may requisition a special meeting, but that if a quorum is not present and the meeting was convened "upon the requisition of members" it shall be dissolved.[109] These provisions imply that "member" and "shareholder" are synonymous under the Act. It follows that a shareholder who had been allotted a share according to the above procedure would have all the same rights in the association as a shareholder who had voluntarily subscribed for a share.

Dissolution of the association required the consent of three-fourths of the shareholders, testified to by their signatures on an instrument of dissolution.[110] This provision later caused difficulty when associations wished to dissolve and more than one-quarter of the shareholders had, for one reason or another, ceased to be active members.

The 1913 Act required the Registrar to prepare standard by-laws not inconsistent with the Act that would be applicable to every incorporated association and to submit them for approval to the Lieutenant-Governor-in-Council.[111] These standard by-laws were approved by Order-in-Council on January 8, 1914.[112] The Act permitted co-operatives to pass supplemental by-laws of their own that would become operative if approved by the Registrar and if not inconsistent with the standard by-laws.[113] The standard by-laws provided a comprehensive code for the internal management of the co-

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108 Id., s. 18.

109 Standard By-laws governing all Associations incorporated under the Agricultural Co-operative Associations Act, Saskatchewan Gazette 1914, vol. 10, no. 1, at 8, Article 6.

110 Supra, note 97, s. 25.

111 Id., s. 6.

112 Supra, note 110.

113 Supra, note 111.

operative, and since they were binding on all co-operatives these by-laws became the basis for the management of co-operatives in Saskatchewan. These standard by-laws were amended from time to time, but remained in force until 1983 when they were repealed and replaced.[114]

The standard by-laws of 1914 included precise requirements for meetings. The first general meeting was to be held within two months of the association registering at a time and place to be determined by the provisional directors.[115] The term "provisional directors" is not defined, but must be presumed to refer to the five or more incorporators mentioned in section 4 of the Act. The by-laws further required that the co-operative hold an annual meeting on the second Wednesday of January.[116] Thus all co-operatives held their annual meeting on the same day of the year. Special meetings could be held at the directors' call or by written requisition (stating the object of the meeting) of not less than one-fifth of the shareholders. When the directors received the requisition, they were required to call the meeting forthwith, and if they failed to do so within 21 days from the date of the requisition, the requisitionists or any other shareholders amounting to the required number could call the meeting. Each shareholder was to receive a notice in the mail at least 10 days prior to the meeting, and an announcement of the meeting was to be placed in at least one newspaper circulating in the neighbourhood. A quorum for any meeting was one-fifth of the registered shareholders.[117]

The effect of these standard by-laws was that a co-operative customarily held just one meeting in the normal course of events - the annual meeting. Between annual meetings the directors administered and controlled the business and were not required to involve the members. This was perhaps one of the most unfortunate aspects of the by-laws, since it artificially restricted the amount of interest that members were expected to take in their co-operative. The Rochdale Equitable Pioneers Society held quarterly meetings[118] at which the directors were expected to respond to the members' concerns;

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114 Co-operatives Act, S.S. 1988, c. C-37.1.

115 Supra, note 110, Article 1.

116 Id.

117 Id.

118 Supra, note 17.

early Saskatchewan co-operatives, which had a significant failure rate (50% between 1914 and 1938)[110] might have benefited from more frequent members' meetings.

The voting provision in the standard by-laws was as follows:

> At all meetings of the association each shareholder in good standing shall have one vote, and a majority vote of the shareholders present shall decide all questions.[120]

The phrase "in good standing" is nowhere defined and its meaning is uncertain. One might assume that it referred to a shareholder who had fully paid for a share but shares were payable by instalments as provided by the by-laws.[121] In the early co-operatives, shares were often not fully paid-up, and it is improbable that the bylaw was intended to disenfranchise such a large group. More probably, a shareholder was considered to be in good standing if he had paid all the instalments that were due to be paid under the by-laws.

The above voting provision must be read as subject to other sections which provided for other than a majority vote. For example, the supplemental by-law concerning removal of directors was as follows:

> The association at any annual meeting, or at any special meeting duly called for that purpose, may by a special resolution, endorsed by a majority of the registered shareholders, remove any director before the expiration of his period of office and may by an ordinary resolution appoint another person in his stead, the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.[122]

Neither "special resolution" nor "ordinary resolution" are defined in the Act or the by-laws but "special resolution" was defined in The Companies Act, as follows:

> s. 121. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may

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119 Co-operative Purchasing Associations in The Province of Saskatchewan, Part I, Department of Agriculture, Bulletin No. 96-A, Regina, 1939, at 18.

120 Supra, note 110, Article 11.

121 Supra, note 97, s. 8.

122 Supra, note 110, Article III. (emphasis added)

> be present in person or by proxy in cases where by the regulations proxies are allowed at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed [123]

Since the supplemental by-law refers to a "special resolution, endorsed by a majority of the registered shareholders," its drafters probably intended a "special resolution" to be a resolution passed by a three-fourths majority of the registered shareholders at a properly called general or special meeting and entitled under the by-laws to vote

The standard by-laws provided that supplemental by-laws necessary for the regulation of the association's business could be adopted at a general or special meeting, but in this case by a two-thirds majority of the shareholders present.[124]

The standard by-laws provided that the board of directors be composed of three, six or nine members, elected from the shareholders at the first general meeting One-third of the board were elected to serve for one year, one-third for two years and one-third for three years [125] This method of election provided continuity and a degree of stability, as the board would always include some more experienced members This gradual replacement of board members has continued to be the general practice in Saskatchewan co-operatives to the present day.

The auditor was elected at the annual meeting of shareholders and the president vice-president and the secretary-treasurer were elected at the first board meeting after the annual meeting. It was not required that the secretary-treasurer be a director If the office of the auditor or of a director became vacant, the board appointed a replacement to serve out the rest of that officer's term [126]

The general duties and powers of the directors were outlined in the standard by-laws as follows.

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[123] R.S.S. 1909 c 72 s. 121

[124] Supra, note 110 Article VIII.

[125] Id., Article III

[126] Id.

> The directors shall have the general management and control of the business and property of the association and shall have power
>
> a) To allot and transfer the capital stock of the association subject to the provisions of section 8 of The Agricultural Co-operative Associations Act
>
> b) To engage, define the duties and fix the remuneration of such officers and employees as they may deem necessary for the carrying on of the business of the association.[127]

This provision appeared to give exclusive control of the co-operative to the board of directors, and as such, was in conflict with the principle of democratic control as understood by early co-operators. When the Rochdale Pioneers formulated the co-operative principles in the mid-nineteenth century, the principle of democratic control was given particular emphasis. The early co-operators anticipated a participatory form of democracy by which the co-operative members would maintain an active interest in the business affairs of the co-operative, attend meetings regularly, and make resolutions at those meetings. They perceived the board of directors as a body whose role was to put into effect the policies developed by the members and whose powers would be exercised subject to the wishes of the members as expressed in general meetings. The principle that the directors have the exclusive management and control of the business was borrowed from company law, and it seems possible that the rigid application of the principle to the area of co-operative law may have led to unnecessary conflict between co-operative members and the boards of directors that represent them.

The relationship between co-operative law and company law has been an uncertain one. In some respects a co-operative is simply a particular type of limited liability, joint stock company, to which similar legal provisions should apply. For this reason, and perhaps because lawyers employed to draft co-operative statutes would normally be familiar with company law, co-operative statutes are often modelled closely on similar company law statutes. However, co-operatives may also be regarded as a unique enterprise with social as well as economic objectives, and it can be argued that the social objectives have not been given sufficient emphasis in co-operative legislation.

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[127] Id., Article IV

The 1913 Agricultural Co-operatives Act deemed every association to be a company within the meaning of section 142 of The Companies Act.[128] That section made sections 26 to 38 inclusive and sections 40 to 61 inclusive of The Companies Act applicable to co-operative associations. Those sections concern the distribution of capital and the liability of members and directors. Thus the definition of "special resolution", a matter raised earlier, is not expressly applicable to co-operatives.

The application of the Companies Act to agricultural co-operatives was considered by the Deputy Attorney-General shortly after the 1913 Act was proclaimed, when an association failed to hold its first general meeting within two months of registration, and the Registrar requested an opinion as to whether the association should be considered to be dissolved for failing to hold its first general meeting within the time appointed by the standard by-laws.[129] Section 118 of the Companies Act provided that a court could direct that a company be wound up or make any other order as may be just on the petition of any shareholder where the company has failed to hold its first general meeting.[130] The Deputy Attorney-General stated that since Section 118 was not expressly made applicable to co-operative associations, the procedure in that section was not applicable either, and that a co-operative could only be dissolved in accordance with sections 25 and 26 by resolution of the shareholders. He further stated that the law supports the continuance of a company unless some strong reason is put forward to persuade the court to regard the company as dissolved, and therefore, that the by-law concerning the first general meeting must be considered to be directory rather than imperative.

The final section of the 1914 standard by-laws prescribed the order of business of the annual meeting:

1) The meeting to be called to order by the president or acting president
2) The reading and disposal of the minutes of the preceeding meetings
3) Business arising out of the minutes
4) Reports of standing committees appointed at a previous meeting
5) Reports of Special committees appointed at a previous meeting
6) Reports of officers
7) Reports of auditor
8) Unfinished business
9) Nomination and election of officers for the ensuing year
10) Appointment of auditor
11) New business.[131]

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128 Supra, note 97 s. 5 (e)

129 June 10th 1914 letter from T.A. Colclough to Thomson, supra, note 102

130 R.S.S. 1909 c. 72 s. 118

131 Supra, note 110 art. 12

This rather rigid agenda (with minor modifications) continues to be followed by Saskatchewan co-operatives. Consequently, during meetings, the members must listen to a large number of sometimes lengthy reports before they have an opportunity to raise new matters that concern them. Jack Trevena, the former Secretary of Federated Co-operatives Limited, has recently suggested that this rigid meeting format may have had the effect of reducing member participation and of imposing an artificial barrier between members and management. He coined the term "theatrical democracy" to describe this type of members' meeting.[132]

In summary, the Act of 1913 and the standard by-laws were a valuable tool for the early development of community co-operatives in Saskatchewan, but some provisions were destined to create difficulties for some co-operatives.

There was a good deal of correspondence between Keen and Saskatchewan government officials about the 1913 Act. In particular Keen was disappointed that co-operative retails and urban organizations were excluded from the purview of the Act. Incorporation of these co-operatives remained under the Companies Ordinance. He was also concerned about the requirement for cash only transactions.[133] It is apparent that the exclusion of retails from the scope of the Act was as a result of the failure in 1913 of the Saskatchewan Purchasing Company.[134] In any case, the Government had not intended the Act to be a general co-operatives statute.[135] Keen concluded that the Act was a compromise but that he should not be too critical of it, as he was anxious not to prejudice the passage of a federal statute.[136]

Nonetheless in his correspondence with Thomson, Keen was very critical indicating with regret that "I am unable to say much in its favor."[137] Others were opposed to it too, and Chipman, editor of the Grain Growers' Guide, while also

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132 Supra, note 57.

133 January 12th, 1914 letter from Keen to Thompson supra, note 72. Vol. 13 General Correspondence 1914, A-M.

134 January 20th, 1914 letter from Thomson to Keen id., Vol. 14 General Correspondence 1914, N-Y. See December 4th, 1913 letter from J.M. Hill to G.F. Chipman, Editor of the Grain Growers' Guide explaining the collapse of the Saskatchewan Purchasing Company Ltd., id.

135 February 13th, 1914 letter from Thomson to Keen id.

136 January 20th, 1914 letter from Thomson to Keen id.

137 Supra, note 72. In this letter Keen referred to the Act as deliberately excluding co-operative retail stores and wrote "By virtually excluding urban residents from forming co-operative societies a section of the people quite as much in need of the advantages of the movement your legislature has enacted class legislation."

considering it wise to be supportive of the initiative, indicated to Keen that he did not think that the Saskatchewan government wanted to enact any type of co-operative act and that the 1913 Act was a compromise. Chipman further indicated that the "co-operative spirit ... is becoming so strong that it cannot be much longer kept down."[138] Thomson's attempts to gain more support from Keen were not very successful. He stressed that the Act was a first step and that the approach taken by the Act was "both safer and more economical than the conducting of a retail business." According to Thomson, the failure of the Saskatchewan Purchasing Company prompted the trading restrictions in the Act.[139] It is quite likely, however, that the restrictions were primarily a result of pressure from private business interests.[140]

Another matter that Keen thought needed attention in co-operative legislation was a definition provision to clarify what organisations the Act was intended to cover.

It is difficult to assess the impact of Keen's concerns, but it was likely considerable. He urged governments to consult with co-operatives before enacting legislative amendments.[141] and Thomson sent him a copy of amendments to the Agricultural Co-operative Associations Act prior to their enactment. The 1915 amendments, for example, included changes to permit the operation of co-operative retails under the Act (although 75% of the members still had to be farmers) and made the cash business requirements less stringent.[142] Keen also attempted to interest Waldron in following other provincial examples to improve the Saskatchewan legislation.[143] There may have been competition between Keen and Saskatchewan co-operators on some matters of principle and legislation. Keen was not always as involved in developments in

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138 January 29th, 1914 letter from Chipman to Keen, id.

139 January 20th, 1914 letter from Thomson to Keen, supra, note 133.

140 See December 4th, 1913 letter from Hall to Chipman, supra, note 136. Thomson advised Keen that the practice of co-operatives selling their goods at cost "stirs up endless antagonism with local merchants." See also November 3rd, 1919 letter from Thomson to Keen, supra, note 72, Vol. 22, General Correspondence, 1919 - A K.

141 December 7th, 1922 letter from Keen to the Premiers of eight provinces, supra, note 72, vol. 29, General Correspondence 1922 H Y.

142 September 14th, and October 5th, 1915 letters from Thomson to Keen, id., January 8th, 1926 letter from Waldron to Keen, supra, note 72, Vol. 44, General Correspondence, 1926 C E.

143 October 19th, 1928 letter from Waldron to Keen, id.

it appears he would have liked,[144] and there was some disagreement.[145] As the lawyer W B Francis became more involved in the process of advising the co-operatives on legislation, Keen was put into contact with him.[146]

6. DEVELOPMENTS FOLLOWING THE 1913 ACT

Following enactment of the Agricultural Co-operative Associations Act there was a wave of enthusiasm for the organization of local co-operatives Thomson reported in April, 1914 that the Co-operative Organisation Branch was receiving 15 enquiries per day regarding incorporation,[147] by the end of 1914, 113 associations had been registered.[148] A few of these co-operatives operated stores but most of them were operated as local purchasing associations without a store. Local merchants and wholesalers frequently resisted the development of local co-operatives by refusing to sell to them, and farmers quickly realized they could benefit by owning their own wholesale organisation [149] At the 1914 annual convention of the S G G A , it was resolved to form a trading department and to set aside $1,000 was set aside for the purpose In its first six months of operation in 1914, the Trading Department handled $300,000 in supplies at an estimated saving to the members of $75,000 [150]

The special Act of the legislature incorporating the S G G A did not provide for trading operations,[151] and the Act was therefore amended in 1915 to allow the S G G A to carry on the business of wholesale suppliers for all commodities ordinarily used in agriculture [152] An amendment to the Co-operative Associations Act permitted an association to enroll its shareholders, patrons, customers or associate members as

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144 January 31st, 1920 letter from Keen to Waldron supra, note 72 Vol 48 General Correspondence 1920 C

145 January 14th 1920 letter from Waldron to Ketcheson January 15th 1920 letter from Waldron to Keen January 29th 1920 letter from Keen to Waldron id.

146 February 4th 1920 letter from Waldron to Keen id.

147 Public Service Monthly., Regina, April 1914 vol 2 no 8 at 10

148 Tenth Annual Report of the Department of Agriculture of the Province of Saskatchewan Regina, 1914, at 190

149 Supra, note 61 at 292

150 Id., at 294

151 S.S 1908 c. 36

152 S.S. 1915 c 36

members of the S G G.A and enabled the association to "enter into any arrangement for joint purchase, sharing profits, union of interests, co-operation joint adventure reciprocal concession or other plan to further the objects of either association " The amendment further provided that the association could sell farm supplies only to its shareholders and to members of the S.G G.A [153]

The law's response to common practices caused problems for co-operatives For example, many early co-operatives purchased car lots of goods and distributed them directly from the track. In Village of Hafford v John Gilders the issue was whether the Hafford Agricultural Co-operative Association, of which Gilders was the secretary, was a transient trader as defined by The Village Act. The judge delivered his judgement at the Great West Hotel in Hafford on the day following the trial and found in favour of the village.[154] The result was that the co-operative required a licence to distribute goods from the track

In the 1915 amendments the ambiguous definition of "supplies" in the 1913 Act was repealed and associations were empowered "to do anything incidental to the attainment of the said objects, and to forward the interests of farmers and ranchers in every legitimate way, and to purchase, acquire hold and dispose of real property in Saskatchewan required for the purposes of the association and to alienate the same at pleasure "[155] While this amendment appears on first reading to have broadened the powers of the associations, the objects contained in section 4 referred to in the amendment continued to restrict the co operative to "producing, purchasing or selling livestock, farm products or supplies on the co-operative plan " On this basis, the Loreburn Grain Growers Co-operative Association Limited was prevented in 1918 from acting as a hail insurance agent,[156] and in 1920 the Deputy Attorney General advised Thomson that he had "grave doubts" whether the Act allowed a group of farmers to operate a blacksmith's shop [157] In 1920 the Act was amended to permit co-operatives to operate community halls,[158] and in 1922 the purpose section was widened by permitting

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153 S.S 1915, c. 37

154 This case is unreported but is referred to in a newspaper clipping in Saskatchewan Archives supra, note 108, Call No R-428, file 18a

155 Supra, note 154

156 July 25th, 1918 letter from Colclough to Thomson id

157 January 15th 1920 letter from Colclough to Thomson id.

158 S S 1920 c. 50

co-operatives to establish and operate on the co-operative plan "any business for procuring and selling farm supplies or rendering services of pecuniary value to farmers ..."[159] Following this amendment, co-operatives were permitted to act as hail insurance agents.[160]

The 1913 Act had provided for dissolution of an insolvent co-operative that was still in operation, but since by the Agricultural Co-operatives Act, co-operatives are deemed to be companies under The Companies Act,[161] it followed that The Companies Winding-Up Act was applicable to co-operatives. Under that Act it was possible to apply to a court for a winding-up order, which would be granted if the court was of the opinion that it was just and equitable to do so.[162] In 1923, The Agricultural Co-operatives Act was amended to require the liquidators acting under The Companies Winding-Up Act to notify the Registrar of Agricultural Co-operative Associations of the liquidation.[163]

A Cash Trading

The restriction to cash trading was amended in 1915 to read as follows:

> 5(4) The association shall, except as hereafter provided, pay for all goods purchased upon delivery: Provided that any association may purchase upon credit from any other agricultural co-operative association or any company, association or society incorporated by any special Act of the Province of Saskatchewan having objects wholly or in part similar to the agricultural co-operative associations.
>
> (5) No association shall sell its goods, wares or merchandise to its shareholders, patrons or customers except for cash. No credit shall be given.
>
> (6) The directors shall not have power to pledge the credit of the association except as aforesaid or for the purchase price or rental of business premises, salaries and incidental

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159 S.S. 1923, 22 c. 52, s. 2.

160 March 10th, 1925 letter from Deputy Attorney-General Geddes to P.H. Auld, Deputy Minister of Agriculture, supra note 102.

161 S.S. 1913, c. 82, s. 25; S.S. 1915, c. 37, s. 3; S.S. 1923, c. 43, s. 3.

162 R.S.S. 1920, c. 62, s. 5.

163 S.S. 1923, c. 43, s. 8.

> expenses, or for moneys temporarily borrowed to pay for goods purchased or expenses incurred in connection therewith or the shipment thereof [164]

This restriction to cash trading was a source of concern to both the managers of the co-operatives and the wholesalers. In the fall of 1919 many wholesale suppliers petitioned the provincial government to remove the restriction. They argued that they were very willing to do business with co-operatives, that the normal method of doing business was to provide credit, and that credit was generally being provided despite the restriction in the Act. They stated that they were willing to put their faith in the farmers' organizations, and that farmers, the co-operatives and the suppliers would benefit from credit transactions.[165] Their cause was endorsed by H.W. Ketcheson, the manager of the Davidson Co-operative Association in a letter to the Minister of Agriculture, C.A. Dunning.[166] The Minister replied in a letter three days later as follows:

> I find a somewhat divided opinion and the division of opinion seems to follow broadly the lines between the strong association such as yours and the smaller one just reaching out. So far as the wholesalers are concerned, they undoubtedly do desire the cash section eliminated, but I sometimes wonder if this desire is altogether in the interests of the small struggling association which a comparatively small amount of unwise debt might easily put out of business. We must bear in mind in considering this question that a very large proportion of our co-operative associations are still in a pioneer condition. Many of their managers are just beginning to acquire experience, and the restriction to cash dealing in the case of an association managed by men of limited experience is not without its beneficial features.[167]

A compromise was adopted in 1922, when the Act was amended to permit a retail co-operative with a paid-up capital of at least $5,000 to pass a supplementary by-law

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164 S.S. 1915, c. 37, s. 2.

165 Saskatchewan Archives, Call No. M6, File X-9-11, supra, note 162. September 15th, 1919 letter from Ashdown Hardware; see also October 25th, 1919 letter from Greenshields Limited, at the time the largest wholesale house in Canada, to Premier Martin.

166 Id., December 24th, 1919 letter from Ketcheson to Dunning.

167 Id., December 27th, 1919 letter from Dunning to Ketcheson. At the time the Davidson Co-operative was one of the largest and most successful in the province.

making the restrictions on credit transactions in the Act inapplicable.[168] The cash trading restriction was considered in Guaedinger & Sons Ltd. v Turtleford Grain Growers Co-operative Association Limited.[169] The plaintiff company sold goods to the association but was not paid for them. Some of the goods were in turn sold to customers. The Saskatchewan Court of Appeal held that the intention of the Act was to prohibit credit transactions and that the contract was therefore ultra vires the association. However, the court went on to hold that since the sale of goods was null and void, the property in the goods remained with the plaintiff. The court held that unsold goods should be returned to the plaintiff and that the association should account to the plaintiff for the proceeds of goods already sold. The decision clearly went further than earlier cases to protect the interests of associations' suppliers.

B Powers of Associations Under the Act

In 1924 the Attorney-General was asked for an opinion as to whether a co-operative could increase its capital by increasing the par value of shares that were already sold. The Rozilee Co-operative Association Limited had passed the following resolution on March 15, 1917:

> That the authorized capital of the Association is hereby increased from $2 000 to $20 000 by increasing the par value of the Association's 400 shares from $5 to $50.[170]

The Parkside Co-operetive Association passed a similar resolution on March 7, 1923. The Deputy Attorney-General's opinion was that the by-law was not authorized by any statute because neither the Agricultural Co-operatives Act nor The Companies Act provided for an increase in the par value of individual shares, because under The Companies Act, capital could only be increased by issuing new shares, and because the Co-operatives Act contained no provision for imposing a liability on a shareholder "greater than that which he contracted by his original purchase of shares."

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168 S.S. 1931 c. 23 c. 53 s. 4

169 [1922] 1 W.W.R. 936 (Sask. C.A.)

170 February 18, 1924 letter, supra, note 102

C Apportionment of Surplus

The 1913 Act set out a scheme for distribution of a co-operative's profit. After provision for a reserve fund and interest on capital, the surplus was to be divided among the patrons, whether they were shareholders or not. In 1916 an amendment restricted the division of the surplus to the shareholders unless the supplemental by-laws provided for distribution to patrons and shareholders. The 1916 amendment also permitted a co-operative by supplemental by-law to provide for patronage dividends of non-members to be accumulated by the co-operative until they amounted to the par value of a share, in which case a share was to be issued.[171] A further amendment in 1918 increased the interest rate on paid up capital from 6% to 8%.[172] In 1922, the directors were permitted to retain patronage dividends until the unpaid balance of all shares was fully paid up if the supplemental by-laws so provided.[173]

In 1924, the Co-operation and Markets Branch of the Department of Agriculture had to consider several supplemental by-laws that appeared to infringe the policy of the Act. The Watrous Grain Growers Co-operative Association Limited proposed in a by-law to retain any patronage dividend that was less than 25 cents and to credit the amount to the patron or shareholder who otherwise would have received it. If that individual did not do business with the co-operative for two consecutive years the amount in that individual's account would be transferred to the association's surplus account, with notice to the individual and a right of appeal to the Board. The Deputy Attorney-General's opinion was that the co-operative had no power under the Act to discriminate between individuals whose volume of business had been large and those whose volume of business had been small. Furthermore, the Act made no provision for the forfeiture of a patronage dividend.[174]

The Leask Co-operative Association Limited proposed to retain patronage dividends beyond the value of one share, until the shareholder owned $100.00 in stock. The Deputy Attorney-General ruled that the co-operative could retain dividends only to

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171 S.S. 1916 c. 37 s. 35

172 S.S. 1921-22 c.52 s. 7

173 March 18th,1924 letter from Geddes to Auld, supra, note 103

174 Id.

the value of one share, and that further dividends must be paid in cash The same association had hoped to pay additional dividends in goods but this was prohibited.[175]

The Maidstone Co-operative Association Limited was incorporated in 1914 and by 1920 had issued 119 shares at a par value of $25 00 with $1 00 paid on each share At the annual meeting on February 21st, 1920 the following resolution was passed

> That we transfer from reserve account the sum of $2,856 00 to be added to shares 1 to 119 at the rate of $24 00 per share

The Deputy Minister of Agriculture was advised that this transaction was prohibited for two reasons Firstly, the co-operative was subject to the provisions of The Companies Act (except where that Act was inconsistent with the Agricultural Co-operative Associations Act) and a company could not invest its reserves in its own shares Secondly, the Co-operatives Act required apportionment of profits on the basis of patronage, and to use the reserve fund in the manner proposed would be a contravention of that principle, since the reserve fund is made up of undistributed profits.[176]

D The 1928 Act and Amendments to 1939

In a 1928 letter to Keen, Waldron recognized the following as deficiencies in the Act: some co-operatives were not operated on a co-operative basis and such operation was not required by the Act; co-operation was practically limited to the "agricultural class" because the Act required 75% of the members to be involved in agriculture and because the title co-operative was abused by private traders He even went so far as to say that "[l]egislation or lack of it... was the reason why associations have failed in Saskatchewan" and rather optimistically, that "[n]othing will go wrong in future with amended legislation in force and the U.F.C. to teach co-operation."[177]

On the question of the legitimacy of some co-operatives or rather, of enterprises masquerading as co-operatives, Keen and others recommended careful scrutiny of all applications for incorporation of co-operatives - a practice that was being followed in

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176 November 22 1926 letter from Dingwall to Auld id.

176 2 S 1913 c. 27 s. 13.

177 April 24th, 1928 letter from Waldron to Keen--supra, note 72 Vol 44 General Correspondence, 1928 C R. See also January 14th 1929 letter from Ketcheson to Waldron id Vol 48 General Correspondence 1929 G

Saskatchewan and Manitoba.[178] In a 1927 letter to Waldron Keen indicated that the Co-operative Union wanted to ensure that the Federal and Provincial governments pass legislation "that would end the exploitation of such words as "pool" and "co-operative" by private corporations and individuals."[179]

E. Credit Transactions

When the S.G.G.A. Trading Department was established in 1914 the Act had been amended to include the following subsection.

> 5(4) The association shall, except as hereafter provided pay for all goods purchased upon delivery: Provided that any association may purchase upon credit from any other agricultural co-operative association or any company, association or society incorporated by any special Act of the Province of Saskatchewan having objects wholly or in part similar to the agricultural co-operative associations.[180]

The result of the amendment was that co-operatives could purchase on credit from the Trading Department of the S.G.G.A., but not from other wholesale suppliers. In the event that a co-operative was unable to meet its liabilities and ceased business, the S.G.G.A. had a priority over other creditors since the arrangements with the other creditors were ultra vires. This special treatment for the co-operative wholesaler, while benefitting the Trading Department, was an irritation to the local co-operative managers and other suppliers. Opposition to the restriction on credit was led by H.W. Ketcheson the manager of the Davidson Co-operative. He believed that the co-operatives should not be placed in a different position than the private traders, since it was difficult to command the support of farmers who were refused credit at the co-operative when credit would greatly benefit them. In September 1927, Ketcheson wrote to the Minister of Agriculture to explain the difficulty the Davidson Co-operative was experiencing with some customers. He wrote

> It is all very well to encourage cash trading and that is an ideal we should strive for. However, I have been very strongly opposed to the clause in the Act which makes it impossible for an Association to force collections. In fact I think it is a reflection upon our Provincial Legislature to have any such Act. I do not think the Legislature should

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178 Circular No. 7 July 31st, 1940 Id., Vol. 217 Monthly Bulletins 1931-1946

179 June 30th, 1927 letter from Keen to Waldron, Id. Vol. 40 General Correspondence 1927 A-D

180 S.S. 1915 c. 37 s. 2

> encourage people to be crooked but still that is exactly what the Act does There are some in the Davidson district that were looked upon as honest and had traded with the Association and paid their bills It was not generally known in the early stages that the bills were not collectable Later on as we grew in strength those opposed to our movement carried on a good deal of propaganda with our patrons advising that they did not have to pay their bills A local lawyer was quite active in this We have accounts on our books that would have been paid long ago had we been in a position to sue As it stands a man can stand up and say "yes, I bought goods from the Co-op, but they can not collect it and I am not going to pay" The Legislature says, "yes, you need not pay if you do not wish to do so as we have passed legislation protecting just such guys as you "[181]

A resolution of the co-operative managers at their annual conference in 1927 called for the abolition of all restrictions on credit transactions [183] The Co-operative Union of Canada supported the position of the managers [183]

However, the S G G A had amalgamated in 1926 with the United Farmers of Canada (U F C) to form the United Farmers of Canada (Saskatchewan Section), and this body had taken over the trading operations of the S G G A A meeting was held in Regina on December 16 1927 to consider amendments to the Act. Five representatives of the U F C - Saskatchewan Section attended, including their legal adviser, W B Francis, four government representatives and one representative from the local co-operatives [184] The result was that the U F C position prevailed and no amendment was made to the Act concerning credit transactions

7. THE 1928 ACT - RESTRICTION TO AGRICULTURE REMOVED

During the 1920s the Saskatchewan economy prospered, and cities and towns expanded By 1928, it was generally believed that the benefits of co-operation should be extended to urban residents. The Executive of the Co-operative Trading Association passed a resolution reflecting this belief The resolutions said that the Act should be amended "in such a manner that any consumers co-operative in Saskatchewan might be

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181 September 8th 1927 letter from Ketcheson to Hamilton Saskatchewan Archives Call No M13 File No 26 (1926 ii) W Z supra, note 102

182 August 25th 1927 letter from Baker to Hamilton, id.

183 August 30th 1927 letter from Hamilton to Auld id.

184 "Amendments to the Agricultural Co-operative Association Act " Undated id.

allowed incorporation under the Act".[186] The title of the Act was changed in 1928 to be simply The Co-operative Associations Act[188] the requirement that 75% of the members be agriculturalists was repealed and all references to farmers or agriculture in the Act were removed.[187]

A. Apportionment of Surplus

A "patron", previously undefined in the Act, was defined as a person who purchased more than $50 worth of merchandise from an association in any one year.[188] The apportionment of surplus section was amended to provide that, after ten per cent of profits were set aside for the reserve fund and six percent interest was paid on paid up capital stock, the remaining surplus be divided among the patrons in proportion to their patronage.[189] The result of this amendment was that a customer, whether a shareholder or not, would not receive a patronage dividend if he spent less than $50 at the co-operative in that year.

A new section was introduced which permitted co-operatives to provide by supplemental by-law that no interest be paid on shares. Upon such a by-law being approved by the Registrar, the co-operative was required, if so demanded by a shareholder holding more than one share, to repurchase for cash all shares in excess of one held by that shareholder.[190]

In 1931, section 25 was further amended to allow the association to pass supplemental by-laws to permit patronage dividends to be retained in either a share or loan capital account (carrying interest at 5%), and amounts in the share capital account to be applied to the purchase of additional shares. A shareholder could withdraw any amount in a loan capital account after giving ninety days notice.[191]

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185 May 6th 1928 letter from Waldron to The Secretary Co-operative Trading Association supra note 72 Vol. 34 General Correspondence 1928 A-E. The Executive members included Kelcheson and Waldron.

186 S.S. 1928 c. 54

187 Id.

188 Id. s. 2 (3)

189 Id. s. 28 (3)

190 S.S. 1928 29 c. 42 s. 2

191 Id. s. 26

Also in 1931, the definition of "patron" was altered to be a non-shareholder purchasing over $50 worth of merchandise in the year. Patronage dividends were to be divided among "patrons and shareholders".[192] Thus, shareholders would receive a dividend even if their annual purchases amounted to less than $50.

A further amendment in 1935 permitted the members to provide by supplemental by-law that different commodities should have different scales of dividends, and that the directors could declare that no dividend would be paid on certain commodities.[193] This provision was further amended in 1936 to permit a higher scale of dividends to be paid to shareholders than to patrons. It also provided that where dividends due to a non-shareholder patron had been retained for three years and had not accumulated to an amount equal to the par value of one share, the patron would be offered an opportunity to claim the amount; if the dividends were not claimed, they would become the property of the association.[194]

Keen also often responded to requests from Saskatchewan government officials for information about possible federal legislation.[195] When Saskatchewan was considering the introduction of co-operative credit society legislation, Waldron approached Keen for his assistance.[196] For example, in 1932 Waldron indicated to Keen that the Saskatchewan government wanted all applications for registration under the co-operatives legislation to be submitted to Keen prior to incorporation.[197]

Keen had some say in policy matters as well. In 1932 Finlayson was interested in Keen's views on the desirability of amending the Co-operative Marketing Associations Act[198] to allow co-operative marketing associations to accept produce from non-members. Finlayson thought that such a provision would offend the members of the co-

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192 S.S. 1931 c. 56

193 S.S. 1934-35 c. 55 s. 5

194 S.S. 1936 c. 75 s. 8. See November 12th 1932 letter from Arneson to Keen and November 18th 1932 letter from Keen to Arneson on this point, supra, note 72; Vol. 58 General Correspondence 1932 A-C. They were both aware of the view that government intervention in the affairs of co-operatives should be as little was possible, and that subject to some minimum standards, the membership should make its own decisions over such matters.

195 September 4th, 1928 letter from Waldron to Keen, id.

196 October 8th, 1928 letter from Waldron to Keen, id.

197 September 9th, 1932 letter from Waldron to Keen, id., Vol. 58 General Correspondence 1932 A-C.

198 R.S.S. 1930 c. 144

operative.[199] Keen's response was ambivalent. He saw both benefits and detriments to the proposal. He thought that efforts should be made to bring non-members into co-operatives "as true co-operators". However, being in favour of stable legislation, he considered it unwise to experiment with amendments to the Act. He also thought that the amendment could be open to abuse.[200] Finlayson agreed on this last point and considered it unlikely that the amendment would be enacted.[201]

Another issue arose at this time. Arnason contacted Keen for his views on whether retail merchants should be eligible for membership in retail co-operatives.[202] The question was posed in terms of whether this would make the co-operative a wholesale.[203] Keen did not think that co-operative legislation allowed retail merchants to be members of co-operatives; in addition, he considered allowing such membership unwise and probably against co-operative principles.[204] Arnason and Keen also discussed disciplinary authority over co-operatives acting in violation of the law.[205]

In the same year, Arnason asked Keen for his opinion on the creation of a special commodity dividend for co-operatives. Keen asserted that government interference in such matters should be minimal, and in any case, that a general dividend was preferable.[206]

Arnason advised Keen of changes to the Co-operative Associations Act, made on January 7th, 1933, whereby a co-operative's supplemental by-laws could provide that the

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[199] January 30th, 1932 letter from Finlayson to Keen, supra, note 72, Vol. 58, General Correspondence, 1931-A-C.

[200] February 2nd, 1932 letter from Keen to Finlayson, id., Vol. 28, General Correspondence, 1932, A-C.

[201] February 9th, 1932 letter from Finlayson to Keen, id., Vol. 28, General Correspondence, 1932, A-C.

[202] June 2nd, 1932 letter from Arnason to Keen, id., Vol. 58, General Correspondence, 1932, A-C.

[203] This was the view of the Attorney General's Department, and one with which Keen agreed. See June 14th, 1932 letter from Arnason to Keen, and June 17th, 1932 letter from Keen to Arnason, id., Vol. 28, General Correspondence, 1932, A-C.

[204] June 7th, 1932 letter from Keen to Arnason, id., Vol. 58, General Correspondence, 1932-A-C. The rationale would be based on the view that a retail co-operative is an association of persons for the provision of non-profit services to themselves. Membership by a merchant for the purpose of supplying his or her store would make the co-operative an agent for profit motivated distribution of goods to third parties (who might otherwise deal with the co-operative). I am grateful to Dr. Brett Fairbairn (Centre for the Study of Co-operatives and the Department of History, University of Saskatchewan) for pointing this out to me.

[205] Id.

[206] November 12th, 1932 letter from Arnason to Keen, and November 12th, 1932 letter from Keen to Arnason, id.

co-operative could cease paying interest on share capital. He also indicated that Keen's comments on other supplemental by-law provisions would receive consideration.[207] In preparing for the introduction of co-operative credit legislation, Arneson was interested in Keen's comments on the Alberta, Nova Scotia, Ontario and Manitoba Acts.[208] Keen provided an extensive commentary on the Alberta Act together with information on the Manitoba, Nova Scotia, Ontario and Québec Acts.[209] In 1934 Arneson advised Keen that amendments to the Co-operative Associations Act recommended by the CUC would be considered once the Legislature met.[210] In late 1934 Arneson again requested comments from Keen on proposed changes to the Act; these particular changes were proposed by the Consumers Refineries Co-operative Association Ltd.[211]

Keen made suggestions for amendments to the Co-operative Associations Act in late 1934, but unfortunately they were received too late. However, some of his suggestions were included in the amendments as drafted. Keen also suggested that the Act be amended to permit the incorporation of co-operatives without share capital, a proposal that was of interest to Arneson.[212] Keen also reviewed and commented on the Standard By-laws at the request of Arneson.[213]

B Other Amendments

In 1935 the incorporation procedure was amended to give the registrar discretion as to whether to incorporate a co-operative. The words "if he approves of incorporation" were added to the subsection requiring the registrar to endorse the memorandum of association.[214] In the same year another amendment gave a co-operative the power to substitute its own by-laws for the otherwise mandatory standard by-laws, if the proposed by-laws were not inconsistent with the Act, were approved by two-thirds of the shareholders at an annual meeting or a general meeting called for the purpose and

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207 January 7th, 1933 letter from Arneson to Keen, id., Vol. 68 General Correspondence 1933 A-C

208 December 5th, 1933 letter from Arneson to Keen id. Vol. 68 General Correspondence 1933 A-C

209 December 11th, 1933 letter from Keen to Arneson id., Vol. 68 General Correspondence, 1933 A-C

210 April 10, 1935 letter from Arneson to Keen id. Vol. 68 General Correspondence 1933

211 December 5th, 1934 letter from Keen to Arneson id. Vol. 68, General Correspondence, 1933.

212 January 16th, 1935 letter from Arneson to Keen, id., Vol. 73 General Correspondence 1935 C-I

213 October 28th, 1935 letter from Keen to Arneson id.

214 S.C. 1934-35, c. 55, s. 2

were also approved by the Lieutenant Governor-in-Council.[215] This amendment was repealed in the following year.[216]

C Other Developments 1928-1939

In 1929 the U.F.C.'s Trading Department was the nucleus of a new wholesale organization, the Saskatchewan Co-operative Wholesale Society, which was incorporated by a special Act of the Legislature.[217] H.W. Ketcheson, manager of the Davidson Co-operative became the manager of the wholesale.[218]

The Depression of the 1930's began on October 29, 1929 with the Wall Street crash, and had a devastating effect on the prairies in the following decade. The early 1930's brought severe drought, strong winds that blew away the soil, and a grasshopper plague. Wheat prices dropped to record lows and most farmers were in serious financial difficulty. The hardships stimulated an interest in co-operative development and particularly after 1934, many new local co-operatives were organized by wheat pool fieldmen travelling from community to community.

In 1929, trade unionists and teachers primarily in the urban centres organized the Independent Labour Party of Saskatchewan, it formed a coalition known as the Farmer-Labour Group with the U.F.C. (Saskatchewan Section). The Group unsuccessfully contested the 1930 federal election. In 1932, the Co-operative Commonwealth Federation (C.C.F.) was formed in Calgary and held its first annual convention in Regina in July 1933. The Farmer-Labour Group joined the C.C.F. in 1935 and contested the federal election, winning two seats after which the U.F.C. (Saskatchewan Section) terminated its political involvement.[219]

The Co-operation and Markets Branch of the Department of Agriculture played a major role in co-operative development in the 1930's under the leadership of the Commissioner, B.N. Arnason. In 1936 Arnason was charged with preparing credit unions

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215 Id., s. 8

216 S.S. 1936 c. 75 s. 4.

217 Supra, note 87 at 147

218 I. MacPherson Each for All, Toronto, Macmillan & Carleton University 1979 at 124

219 Supra, note 87 at 147, 151, 154, 156, 158 and 161

legislation and welcomed Keen's input. The Act was to be based on the Nova Scotia and Prince Edward Island Acts.[220] Keen advised an adoption of the Nova Scotia Act.[221]

In 1937 the Saskatchewan government was considering amending the Co-operative Marketing Associations Act to provide for membership in a marketing co-operative on a patronage basis. This would permit co-operatives to decide that individual capital investment could be based on the volume of business done with the co-operative. There was concern about the potential confusion among the terms "members", "shareholders" and "patrons". Keen foresaw problems with putting the amendment into practice because of fluctuating volumes of an individual's purchases, he also foresaw problems with members with large families. He thought the solution was to encourage the investment of the surplus funds of each member of the co-operative at a reasonable rate of interest.[222]

In 1937 and 1938 concerns arose over the interpretation given by the tax commissioners to "member" in the Dominion Income Tax Act. Arnason was interested in any progress which CUC had made with the commissioners.[223] Keen thought that members must be admitted as members of the co-operative, while shareholders were those who had been allocated a share. The mere fact of customers receiving a patronage rebate, he opined, would not make them shareholders.[224]

In early 1938 a committee consisting of W.B. Francis, Harry Fowler and Arnason was established to consider revisions of the Co-operative Associations Act. The committee wished to meet with Keen, and in particular, to discuss means of dealing with members whose actions are injurious to a co-operative.[225] Keen agreed to meet with the committee and sent a copy of an Ontario by-law on the subject. He thought that the mere inclusion of a power to expel members would constitute a sufficient discipline on errant members. He also felt that expulsion of members should not be left to a meeting of members. He preferred that this matter be left to the directors.[226]

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220 November 25th, 1936 letter from Arnason to Keen, supra, note 72, Vol. 76, General Correspondence 1936 A-C.

221 December 1st, 1936 letter from Keen to Arnason, id.

222 Keen also commented on the other proposed amendments. See October 29th, 1937 and December 8th, 1937 letters from Keen to Arnason, id.

223 March 2nd, 1938 letter from Arnason to Keen, id., Vol. 88, General Correspondence, 1938-C-H.

224 March 7th, 1938 letter from Keen to Arnason, id.

225 May 12th, 1938 letter from Arnason to Keen, id.

226 May 19th, 1938 letter from Keen to Arnason, id.

Interest had been shown in a students' co-operative residence at the University of Saskatchewan. Registration of such an association would be possible once proposed revisions to the Co-operative Associations Act were passed permitting membership of minors in co-operatives.[227]

A question arose as to whether community halls organized on a co-operative basis were exempt from income tax. Keen's response to Arnason indicated that while the Income Tax Act did not allow for such exemption, it could be engineered if the Saskatchewan Co-operative Associations Act was amended to allow for the incorporation of co-operatives without share capital. These community halls could incorporate under the Act and benefit from the tax exemption under the Dominion Act.[228]

A December 29th, 1921 letter from Keen to Ketcheson indicates that the Union had just won an income tax battle for co-operatives.[229] Part of the argument Keen used to get the support of the Saskatchewan government for the Co-operative Union of Canada was that it could, if it were better financed, fight and win more battles with the Commissioners of Taxation.[230] Taxation of co-operatives was an important concern for Keen and for co-operatives generally, and it appears that Keen's and the CUC's efforts in this regard were very beneficial to co-operatives throughout Canada.[231] Of course they did not win all battles with the Commissioners of Taxation. In 1922, for instance, an unfavourable ruling regarding the taxation of surplus carried over to reserve or to the following year's accounts was handed down.[232]

Two provisions of the 1939 Act were in direct response to discussions with income tax officials. They were a provision permitting the incorporation of co-operatives

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227 November 10th, 1938 letter from Arnason to Keen, id.

228 December 12th, 1938 letter from Arnason to Keen; December 12th, 1938 letter from Keen to Arnason, id.

229 Id., Vol. 26, General Correspondence, 1921, A-J.

230 October 22nd, 1923 letter from Keen to Waldron, id., Vol. 20, General Correspondence, 1923, A-H. It appears from their correspondence that the Saskatchewan government was quite useful to the Union in terms of educational and bookkeeping assistance. Further, Waldron encouraged Saskatchewan co-operators to meet Keen when he visited the Province and encouraged co-operatives to affiliate with the Co-operative Union of Canada.

231 See, e.g., March 2nd, 1938 letter from Arnason to Keen; March 7th, 1938 letter from Keen to Arnason, id., Vol. 28, General Correspondence, 1938, G-H.

232 October 22nd, 1923 letter from Keen to the Young Grain Growers Association Ltd., id., Vol. 207, Inquiries, 1919-24.

without share capital and a change dealing with the apportionment of surplus.[233] Keen pointed out the dangers of relying on the views of local taxation officials in amending the statute without obtaining a ruling from Ottawa.[234] This advice was followed and the amendment was passed. As a result community halls organized on a co-operative basis were exempt from taxation.[235]

Beginning in 1934 an annual Conference of Co-operative Trading Associations was organized to stimulate communication between co-operators, and in 1937 the first of many Co-operative Schools was organized at the University of Saskatchewan in Saskatoon.[236]

8. THE 1939 ACT

In 1938 the Co-operation and Markets Branch undertook a major study of the performance of co-operatives in the province for the period 1914-1938.[237] Following the study a new Co-operative Act was enacted.

The new Act redefined very broadly the objects for which an association could be incorporated.[238] The Act replaced the term "shareholder" with the term "member" and defined a member as a shareholder, or in the case of an association without share capital as a person who had complied with the by-laws of the association governing admission.[239] For the first time it was possible to operate a co-operative on a membership fee basis. Applications for membership were subject to approval by the board of directors,[240] and memberships were transferable only with the approval of the board.[241]

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233 February 6th, 1939 letter from Arnason to Keen, Id., Vol. 85, General Correspondence 1939 C-G.

234 February 15th, 1939 letter from Keen to Arnason, Id.

235 April 21st, 1939 letter from Arnason to Keen, Id.

236 Supra, note 27, at 129 and 165.

237 Co-operative Purchasing Associations in the Province of Saskatchewan, Department of Agriculture Bulletin No. 95 (2 parts) Regina (1939).

238 S.S. 1939 c. 28, ss. 2, 7.

239 Id., s. 2 (3).

240 Id., s. 17 (2).

241 Id., s. 18.

A procedure to expel members was introduced (and is still in effect) The directors could order the expulsion of a member by a two-thirds vote at a properly called meeting (provision was made for repayment of shares). The member was entitled to appeal the order at the next general meeting, where a majority of the members present could confirm or rescind the order [242] It was not specifically stated in the Act that the member was entitled to be heard at the directors' meeting However, in the Supreme Court of Canada case of Marcotte v Societe Coopérative Agricole de Ste. Rosalie, Abbott J. stated that, since the Board was acting in a quasi-judicial capacity, the member was entitled to be heard.[243] The case might be distinguished on the basis that there was no appeal to the general membership and therefore the Board's decision was final. With the changing attitude of the Supreme Court to the principle of audi alteram partem in recent years, and with the influence of the Charter of Rights and Freedoms, it is likely that a court would hold that the member had a right to be heard at both the directors' and the general meeting. The Manitoba statute so provides [244]

In the 1939 Act, the provision for the apportionment of surplus required the directors, after setting aside ten per cent of the surplus for a reserve fund, and paying interest on paid-up capital, to set aside "not more than ten per cent of the surplus as an educational or community fund."[245] This was the first time that the Rochdale principle of perpetuating the co-operative philosophy through educational works[246] was embodied in a Saskatchewan co-operative statute

At various times prior to the passage of the 1939 Act, Keen and Waldron had discussed the co-operative principle of education. The need to disseminate information about the activities of the various co-operatives in Canada was well-recognized. co-operatives could learn a great deal from each others' successes and failures.[247] Even at the early stages of development in Canada there was concern about the inadequate attention directors and managers of co-operatives paid to education and to the need for

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242 Id, s 10

243 [1955] S C R. 294

244 S.M. 1976 c. 47, s 109

245 S S 1939 c 55 s 25

246 D Ish The Law of Canadian Co-operatives, Toronto Burroughs 1981 at 6

247 See, e g. February 19th, 1923 letter from Keen to Waldron supra, note 72 Vol 50 General Correspondence 1923 A E

education funds.[248] Keen pointed out that it "seems almost impossible to get societies to see that money spent in co-operative education is not only money well spent but absolutely imperative for the welfare of the movement."[249] On a similar point Keen also voiced concerns about the "lack of a sense of responsibility and of appreciation of our principles by the directors" and about managers who know "nothing of and [are] not interested in co-operative philosophy from which all permanent economic success arises."[250]

The new Act provided that the association could be dissolved by a three-fourths vote of the members at any duly constituted meeting called for the purpose of considering the resolution.[251] Presumably, this meant a three-fourths vote of the members actually attending the meeting. This provision replaced the requirement that three-fourths of the shareholders living within 35 miles of the head office sign the resolution.

The Co-operation and Markets Branch conducted a thorough study of the effect of customer credit on the co-operatives[252] but no significant amendment was made to the credit provisions of the Act.

9. AMENDMENTS TO THE STANDARD BY-LAWS BETWEEN 1914 AND 1958

The Standard By-laws, drafted in 1914, were amended in 1927, 1937, 1939 and 1942. It has not been possible to determine the particular circumstances which led to these amendments, and it is probable that any documents concerning these amendments have now been lost.

However, there are a few exceptions including two letters from Keen to Arnason containing detailed comments on the Standard By-laws.[253] He questioned the need for annual meetings of all co-operatives to be held in January of each year, the duplication

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248 July 14th, 1923 letter from Keen to Waldron, id.

249 July 25th, 1923 letter from Keen to Waldron, id.

250 March 15th, 1922 letter from Keen to Booth, Vol. 28, id., General Correspondence 1921 A-G. These exact same issues continue to be raised in 1988.

251 S.C. 1939, c. 58, s. 33.

252 Supra, note 235, Part V.

253 October 28th, 1935 letter from Keen to Arnason, supra, note 72, Vol. 73, General Correspondence 1935. See also September 25th, and 28th, 1936 letters from Keen to Arnason, id., Vol. 76, General Correspondence 1936 A-C.

in giving notice of meetings to members directly and in a local newspaper, and the prohibition against a member being an auditor of a co-operative. Keen seemed to have envisaged directors overseeing the operations and management of co-operatives in some detail for he considered it desirable for boards to comprise many committees (including grocery, drygoods and hardware committees). As a consequence, he was in favour of boards of directors being comprised of at least six members and not more than twelve. He thought that there should be a minimum patronage requirement for eligibility for election to the board of directors and that it was worthwhile to consider disqualifying directors who were in arrears with payments to the co-operative. He thought that disloyalty by a director, defined as including doing business with a competitor of the co-operative when it could have been carried out with the co-operative, should be grounds for disqualification. Keen also thought that it might be desirable to take the drastic step of denying voting rights to members who made purchases below a fixed amount per annum. He raised the issues of the appointment of auditors, their and secretaries' duties and the quorum at meetings. While these comments cannot be treated as agreed to by all co-operators, they are issues that were raised by an influential co-operator. As such, they illustrate some of the concerns that gave rise to changes in the by-laws over time.

Keen considered that a vacancy on the board of directors should be filled by the unsuccessful candidate with the most votes at the last annual meeting at which there was a directors' election, with that person holding office until the next annual meeting. He saw this as preferable to the board arbitrarily filling the vacancy.

Other background on changes to the Standard By-laws includes later correspondence among Arnason, Keen, Fowler, Francis and McCaig.[254] This dealt with such matters as the first general meeting of a co-operative, deferral of annual meetings, members requisitioning meetings, quorum at meetings, nomination of candidates for the board of directors, number and removal of directors, bonding of officers, meeting credentials, retirement of members, statutory reserves, the election of auditors and the powers of the Registrar.

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[254] February 3rd, 1941, August 8th, 1941 and April 1st, 1942 letters from Arnason to Keen; February 11th, 1941, September 9th, 1941 and October 4th, 1943 letters from Keen to Arnason; May 14th, 1941 letter from Francis to Arnason; June 2nd, 1941 letter from Fowler to Arnason, May 30th, 1941 letter from McCaig (President, Saskatchewan Co-operative Wholesale Ltd.) to Arnason, all, Vol. 102, General Correspondence, 1941, C-I; Vol. 105, General Correspondence, 1942, A-C; Vol. 109, General Correspondence, 1943, A-C.

In 1927, Article VIII of the Standard By-laws was amended by inclusion of a section entitled "Advice".[255] It was suggested that every association should pass by-laws dealing with the following matters:

> (1) Regulating the manner in which calls may be made on the unpaid portion of shares, and providing penalties for nonpayment of such calls.
>
> (2) Providing how patronage dividends shall be paid to nonshareholder patrons e.g. whether paid in cash or credited on account for capital stock.
>
> (3) Providing such rules as may be required for the regulation of the business of the association and defining any special duties which may be assigned to any officer or servant of the association.

These administrative matters had probably caused problems for some associations. The advice section also included a set of suggested supplemental by-laws, and an offer by the Registrar to provide to any proposed association, free of charge, a set of suitable by-laws, on being informed in detail of the nature of the proposed association's business.

The provisions concerning meetings were amended in 1937,[256] 1939[257] and 1942.[258] Prior to 1937 only annual and special meetings were provided for, but in that year the following section was added under Article I.

> 3. Other General Meetings. - In addition to the annual meeting, a general meeting of the association may be held quarterly or half yearly or at such other time and at such hour and place as may be determined by the directors.

In 1939, a section was added stating that the association could hold a semi-annual meeting in June or July "for the purpose of reviewing the financial results, the progress and problems, or any business of the association."

Clearly the intention of these amendments was to stimulate greater member involvement in co-operatives' business affairs. However, the quorum for any

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255 Standard By-laws Governing Agricultural Co-operative Associations, Saskatchewan Gazette (1927) Order in Council dated June 25th 1927 Article VIII.

256 Standard By-laws approved by O.C.285/37 on March 9th 1937 Saskatchewan Gazette, (1937).

257 Standard By-laws approved by O.C.1410/39 on September 5th 1939 Saskatchewan Gazette, (1939).

258 Standard By-laws approved by O.C.802/45 on June 1st 1945 Saskatchewan Gazette, (1945).

membership meeting was reduced in 1937 from one-fifth of the members to one-tenth of the members living within twenty miles of the head office. In 1939 this was changed to ten members or one-tenth of the number of members, whichever was less.

In 1939, more comprehensive provisions were made concerning procedures and duties of the board of directors. Provision was also made for an executive committee of the directors and for special committees to perform special duties. Of particular interest was a new section concerning membership administration.

> 7 The directors shall keep the members informed regarding the business of the association and encourage interest, discussion and support on the part of the members. The directors shall develop and foster a sense of ownership and responsibility on the part of the membership by the following.
>
> 1 By presentation of periodic reports regarding the conditions of the business, the operation of various business policies, by publicising the activities of the association in the local press and in other ways,
>
> 2. By arrangement of business and educational meetings of the association as frequently as conditions warrant,
>
> 3 By maintaining direct and personal contact with members to explain the business and progress of the association and solicit their support;
>
> 4 By encouraging active participation in the affairs of the association at meetings and by the appointment of special committees of the members where feasible and publicising the activities of such committees.
>
> 5 By encouraging the organisation of study and discussion groups regarding the principles and practices of co-operation and dissemination of co-operative literature,
>
> 6 By identifying with and lending the support of the association to the social educational and economic problems and affairs of the community to the extent that this does not interfere with the main objects for which the association is organised,

> 7 By affiliation with, or the support of other co-operative associations to foster the development of the co-operative movement.

This section had two effects It clearly set ont the duties of a co-operative director and it also imposed upon the board a statutory obligation to perform those duties At common law a director is expected to demonstrate the degree of skill that may reasonably be expected from a person of his or her knowledge and experience The purpose of the section was to raise the standard of performance of boards of directors, by including specific provisions in the standard by-laws it could be argued that the directors were made aware of their precise duties and that the common law standard of performance was thereby raised. Clearly, provincial officials hoped to improve directors' performance and thereby increase members' involvement in their co-operatives

In 1941 Arnason and Keen discussed an amendment to the Co-operative Associations Act that would allow co-operatives to adopt a "revolving door plan" of financing The committee felt that this had already been provided for in the new Act. Keen felt that the wording of section 25 of the new Act - "subject to the provisions of the by-laws" - did not give the co-operative power to vary the terms of the Act. He did feel that Arnason's argument that section 10 allowed for the adoption of the revolving door plan for financing was stronger because of the words "notwithstanding anything in the Act contained" He considered it odd, however, that a co-operative could enact a valid by-law which would conflict with the specific requirements of the Act[259] According to Francis, changes in the Standard By-laws were proposed in 1941 mainly to improve clarity and consistency[260] McCaig showed particular interest in provisions regarding the nomination of directors and control over their conduct[261] The revisions to the Standard By-laws also gave considerable latitude to co-operatives on the subject of holding their annual meeting and to new co-operatives regarding holding their first general meeting[262] Keen was concerned that the Standard By-laws were becoming too lengthy and too rigid, having the effect of placing co-operatives in a strait jacket He

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259 February 3rd, 1941 letter from Arnason to Keen February 11th, 1941 letter from Keen to Arnason supra, note 72 Vol 102 General Correspondence 1941 G I

260 May 14th 1941 letter from W.B Francis id.

261 May 31th 1941 letter from J McCaig Saskatchewan Co-operative Wholesale Society Ltd id. Fowler considered that a good job had been done in the revision

262 August 6th 1941 letter from Arnason to Keen, id.

felt that as much latitude as is reasonably justifiable should be given to individual co-operatives [263]

In 1942 Keen was concerned about the supplemental by-law regarding retirement of members - he thought it was ultra vires the Act Arnason was interested in Keen's reasons and asked for his comments on the statutory reserve [264] This latter point continued to be of interest into 1943 Arnason thought that allocation of the statutory reserve should not be encouraged [265]

10. AMENDMENTS TO THE CO-OPERATIVE ASSOCIATIONS ACT 1944-1950

In June 1944, a C C F government was elected in Saskatchewan with a large majority and a stated enthusiasm for co-operative development. T C Douglas became Premier and L.F. McIntosh was the first minister of the new Department of Co-operation and Co-operative Development.[266] Douglas formed an economic advisory committee chaired by G E Britness, and an Economic Advisory and Planning Board with George W Cadbury, a British economist and member of the British Labour party, as its chair Cadbury advised the Cabinet on economic and co-operative development [267]

The new C C F government did not immediately make major amendments to co-operative legislation In the first session of the legislature in the fall of 1944, only a very minor amendment to the Act was made,[268] following correspondence between the Registrar, the Deputy Attorney-General, W B Francis and others [269]

In 1944 the question of retaining patronage dividends was much debated Arnason and Keen discussed a co-operative retaining a member's patronage dividends and placing them to the member's credit in a share capital account until it amounted to the value of a share and then issuing a share to that member Arnason was concerned about the desirability of such a provision and even about whether it would be authorized by the

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263 September 9th 1941 letter from Keen to Arnason, id

264 April 1st 1942 letter from Arnason to Keen id., Vol. 104 General Correspondence 1942 A C

265 October 4th 1943 letter from Arnason to Keen id., Vol 109, General Correspondence, 1943, A-C

266 John H. Archer Saskatchewan, A History, Western Producer Prairie Books Saskatoon 1980 at 261

267 Id., at 274.

268 8 & 9 1944 (2nd Session) c. 44.

269 October 19th 1944 letter from Blackwood to McIntosh-supra, note 102

Standard By-laws.[270] Keen thought that retaining of patronage dividends would be permissible under the by-laws existing at the time, although he doubted the legality of issuing of share capital in a manner not in accordance with usual practice. In terms of co-operative practice, Keen thought it unwise to encourage a policy whereby people were recognised as members when they had not specifically sought membership.[271]

It would appear that Keen viewed legislative activity of the provincial and federal legislatures as potentially damaging. In other words, he had no illusions about the attitude of governments towards co-operatives. In one graphic example, he asked all members of the CUC to keep track of legislative developments in their provinces and asked them to "bring to our notice legislation calculated prejudicially to affect the interests of co-operative societies when it is being introduced."[272] For example, it was not until amendments were made to Saskatchewan's Pharmacy Act in 1946 that co-operatives had the right to operate pharmacies.[273] Keen was quick to point out the positive effects of the CUC's interventions. For example, he took the credit for staving off changes to the Criminal Code which would have "prohibited the payment of purchase dividends by co-operative societies in Canada."[274]

In 1946 a number of minor amendments were made. Their general thrust was to make the directors' previously absolute discretion to decide certain matters subject to "such conditions as may be set forth in the by-laws."[275] The maximum interest payable on loan or share capital was reduced from 6% to 5% (and remained at that level until 1983).[276] Also the maximum percentage of the surplus to be set aside for an educational or community fund was reduced from ten to five percent.[277]

In 1947, more extensive and important amendments were made to the Act. The Registrar was given increased authority to decide in any particular instance whether the

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270 December 27th 1944 letter from Arnason to Keen, supra, note 72, Vol. 110, General Correspondence 1944, C-G.

271 January 4th, 1945 letter from Keen to Arnason, id., Vol. 121, General Correspondence 1945, C-F.

272 Circular No. 3, March 31, 1936, id., Vol. 217, Monthly Bulletins 1931-46.

273 Sask. Druggists Concerned over Co-ops Future Plans, Drug Merchandising, June 1st, 1946, at 53.

274 Circular No. 3, 1937, supra, note 273.

275 S.S. 1946, c. 65, ss. 6, 7-10.

276 Id., s. 6.

277 Id., s. 11.

incorporation of a co-operative was economically advisable or otherwise feasible.[278] Co-operatives were permitted to pass supplemental by-laws which were not consistent with the standard bylaws, provided they were approved by the Registrar.[279] This measure was passed in recognition of the diverse membership and extent of co-operatives' operations in the province.[280]

In 1946 a community association dissolved and the shareholders wished to divide the assets, amounting to $2,500, amongst themselves. The Act did not permit any part of the surplus to be paid to shareholders as interest or dividends, but it did not clearly state the method for disposing of a surplus at dissolution.[281] At the suggestion of Mr Blackwood, the Deputy Attorney-General, the legislature amended the Act to provide that the surplus at dissolution of a community association "shall be used for the purpose of providing services for social welfare, health, civic improvement, education or for other objects of a benevolent or charitable nature".[282] The restrictions on credit transactions were reduced slightly by a provision that, where an association had paid up capital over $5,000, the members could pass a special resolution, supported by three-quarters of the members present at an annual or a special meeting, to permit sales on credit.[283] Previously the resolution required the signatures of two-thirds of the shareholders living within 20 miles of the head office.[284] The Registrar was aware that many associations were conducting credit transactions without legal authority and he hoped to legitimize these transactions by passing suitable supplementary by-laws.[285] The provision establishing an educational or community fund, first passed in 1939, was repealed.[286] The Registrar suggested that such expenses should be paid out of the

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278 S.S. 1947 c. 72, s. 6

279 Id., s. 7

280 June 20th 1947 letter from the Registrar to secretaries of co-operative associations, Saskatchewan Archives, Call No. R0, File I6(g) supra, note 102

281 October 29th 1946 letter from Blackwood to Arnason, Id.

282 S.S. 1947 c. 72 s. 8

283 Id., s. 6

284 S.S. 1939 c. 98 s. 24.

285 Supra, note 281 at 2

286 S.S. 1947 c. 72 s.10.

association's operating expenses, rather than out of its surplus.[287] Following the amendment, no minimum or maximum amount was required to be spent on member education or community work.

In 1948, only minor amendments were made to the Act.[288] In 1949, amendments were passed concerning the association retaining patronage dividends as share capital. One such amendment stated that, where the supplementary by-laws required the purchase of additional shares from patronage dividends, one share could be issued to the spouse of the member on the written request of that member, and the spouse then became a member.[289] Thus it became possible for a spouse to become a member against his or her wishes! Also, in 1949, provision was made for the amalgamation of co-operatives.[290]

11. THE CO-OPERATIVE ASSOCIATIONS ACT, 1950

In 1949 and 1950, a major revision of the Co-operative Associations Act was undertaken. The Registrar prepared a draft of the proposed new Act that a committee of the Co-operative Union of Saskatchewan revised. The committee sent the revised draft to co-operative leaders and other government officials for further comment. George Cadbury of the Economic Advisory and Planning Board,[291] E.F. Scharf, the editor of The Co-operative Consumer,[292] and Hon. T.J. Bentley[293] all made a number of suggestions.

The revised Act was much longer than previous Acts because it was intended to fulfill three distinct purposes. Firstly, it was intended to be a comprehensive statement of the law as it affected co-operatives. The Registrar wished to avoid reliance on The Companies Act as much as possible. Secondly, the Act was intended as a guide or

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287 Supra, note 288 at 3.

288 S.S. 1948, c. 67.

289 Id.

290 Id., s. 7.

291 December 23rd, 1949 letter from Cadbury to Douglas. Saskatchewan Archives, T.C. Douglas collection, Call No. R-79.1, File 11, supra, note 102.

292 January 30th, 1950 letter from Scharf to Arnason. Saskatchewan Archives, Call No. 10, File 19(g), id.

293 Supra, note 293. February 6th, 1950 letter from Bentley to Douglas, id. See also Recommendations of C.D.S. December 17, 1949, id.

handbook for the 967 associations then incorporated. Thirdly, it was drafted to deal with new types of co-operatives that were emerging.[294]

The new Act provided a definition of "co-operative basis" for the first time:

> 2(4) "Co-operative basis" means the carrying on of an enterprise organized, operated and administered in accordance with the following principles and methods:
>
> (a) each member or delegate one vote;
>
> (b) no voting by proxy;
>
> (c) race, creed or political beliefs no bar to membership,
>
> (d) services primarily for members,
>
> (e) interest on share capital not to exceed five per cent per annum;
>
> (f) services to members and patrons as nearly as possible at cost, so that:
>
> (i) savings or surpluses arising from yearly operations are paid to members or members and patrons in proportion to patronage, use or contribution, after provision for operating expenses and valuation reserves, subject to the bylaws, or,
>
> (ii) in the case of community service associations as defined in Part IV, savings or services are placed to reserve for maintenance or improvement of services provided by the enterprise, or donated for community welfare, and no patronage dividends or interest or dividends on share capital are paid.[295]

The definition was intended as a general guide to co-operative principles, and as a basis for deciding whether to register a new association or whether to strike an existing association from the Register.[296] Generally, co-operative leaders approved of the definition.

The new Act continued to distinguish between "members" and patrons" despite the objection of E.F. Scherf who believed that there was no necessity for any reference

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294 December 7th, 1949 letter from Arneson to Douglas, id.

295 S.S. 1950 c. 66 s. 2 (4)

296 Supra, note 292

to "patrons" in the Act.[297] A "patron" was defined as "a person not a member but using the services of the association to such extent as may be provided in the by-laws."[298] A patron was entitled (under the definition of "co-operative basis") to a share of any surplus where the by-laws so provided.

Following a recommendation of the Co-operative Farming Conference,[299] the Registrar had intended to make three the minimum number of members required to incorporate a co-operative. However the C.U.S. thought that the number should remain at five (Cadbury also wanted a higher minimum), and Arnason heeded the advice and left the minimum at five, with an exception for production associations which could have three incorporators.[300] In a letter to the Premier, Arnason mentioned that as a matter of policy a retail consumer co-operative would not be incorporated if less than thirty members supported it.[301]

The new Act included a number of sections concerning administration and the board of directors that were previously included in the standard by-laws. Some provisions from The Companies Act referring to such matters as contracts and conflict were incorporated.

The Act also included a series of special sections concerning particular types of co-operatives. The sections that concerned consumers' co-operatives dealt particularly with the problem of credit transactions. The minimum paid-up member capital required before a supplementary by-law approved by a special resolution could permit sales on credit was increased from $5,000 to $10,000.[302] The Act attempted to delineate the responsibilities of the directors and employees of the association with respect to ultra vires credit sales. The Act stated that where the directors authorized a credit transaction that was not permitted under the Act, and if the association so requested, the directors would be personally responsible for any loss incurred by the association as a result of the transaction. The extent of the personal liability was restricted to the amount of their

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297 Supra, note 195 at 2

298 S.S. 1950 c. 60 s. 2 (7)

299 Supra, note 295

300 S.S. 1950 c. 60 ss. 5 (1) and 76

301 Supra, note 295. See also December 19th, 1949 letter from Arnason to Douglas supra, note 161

302 S.S. 1950, c. 60 s. 66

investments in the co-operative.[304] It became an offence under the Act for an officer or an employee of a consumers' association to purchase or sell goods on credit, except in accordance with the instructions of the directors.[304] E F Scharf, writing in the Co-operative Consumer, was concerned that this provision interfered unnecessarily with the employment relationship between the associations and their employees,[305] but the Registrar chose to leave the section in the new Act.

The following section was introduced concerning the qualifications of directors:

> 72 A consumers' association may, by supplemental by-law, provide that no member shall be eligible for election as director if any amount owing by him is in arrear or if he has failed to purchase or obtain from the association, during its preceding fiscal year, goods, wares or merchandise of such value as may be mentioned in the by-law.[306]

E F Scharf objected strongly to this provision. He said that it served no useful purpose and contravened the democratic principle of co-operatives. In a letter to the Registrar he said, "It would constitute, in my opinion, a sort of fascist tendency in a co-operative organization".[307] George Cadbury was of the same opinion,[308] but the section remained.

Part III of the Act dealt with "production associations" and was based on the experience gained up to 1950 with co-operative farming associations.

Part IV was concerned with community service associations and contained provisions concerning them that resembled those in earlier legislation.

Part V was entirely new and concerned housing associations. At that time they were an emerging form of co-operative and the Department had only limited experience with them. Part VI, dealing with federations, was based on the previous Act. A new set of standard by-laws was also drafted to accompany the new Act.[309]

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303 Id., s.69

304 Id., s.70

305 Supra, note 293 at 5

306 S S 1950 c. 88, s. 72.

307 Supra, note 293 at 2.

308 Supra, note 292

309 Standard Bylaws approved by O.C.2009/50 on September 30th, 1950. Saskatchewan Gazette, 1950

12 AMENDMENTS TO THE CO-OPERATIVE ASSOCIATIONS ACT, 1950-1960

The Act was next amended in 1952. A new section required every association except community service associations to provide all members annually with a statement of their share capital or other amounts to their credit and with the amount credited to them from the surplus in the most recent fiscal year.[310]

The provision allowing one share to be assigned to a spouse from retained patronage dividends where the supplemental by-laws permitted it was re-enacted so that a supplemental by-law was no longer required. On August 1, 1952 the Registrar wrote to all secretaries of co-operatives to explain the new amendments, and advised them that the assignment of a share to a spouse was at the request of the transferor and with the approval of the transferee.[311] In fact, this does not appear to have been the case. No provision was passed requiring the consent of the transferee, and the phrase "on the written request of the member" that appeared when the measure was introduced in 1949 was left out of the revised Act in 1950, and was not included in the 1952 amendment. Thus the assignment could in theory legally be made without the approval of either spouse, though it is clear from the Registrar's letter that that was not the intended result.

The 1952 amendments also provided that where a special resolution had been passed to permit credit purchases or sales, the resolution became void if the co-operative's paid-up capital fell below the statutory minimum required for such a resolution.[312]

Further amendments were made in 1953 at the suggestion of C.U.S., except that the Co-operative Union had requested the abolition of restrictions on credit transactions, and Premier Douglas's government could not see its way to supporting that proposal (Douglas was the Minister of Co-operation and Co-operative Development from 1949 to 1960).[313] The amendment enabled co-operatives with supplemental by-laws permitting

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310 S S 1952, c. 80 s. 8

311 August 1st 1952 letter from the Registrar to Secretaries of co-operatives Saskatchewan Archives, C.U.S. Collection Call No. 110 File 19(a) supra, note 102

312 S S 1952 c. 80, ss. 16 & 17

313 February 12th 1953 letter from Arnason to Lloyd (Woodrow Lloyd's brother and President of C.U.S.) Saskatchewan Archives supra, note 102

credit transactions to pass by-laws restricting the amount of such transactions and confining them to particular classes of goods designated in the by-law.[314]

Other amendments required the directors of a consumers' association to examine the condition of the business regularly, to prepare inventory at least semi-annually and to examine all credit transactions regularly to ensure that they were in conformity with the Act.[315]

In November 1953, a meeting held between C.U.S. and Department officials[316] resulted in further amendments to the Act in 1954. The provisions that had previously appeared in the standard by-laws concerning withdrawal of members were revised and included in the Act. Also, allowance was made for meetings of members by districts.[317]

Further, insignificant amendments to the Act were made in 1956,[318] 1957[319] and 1959.[320]

13. THE CO-OPERATIVE ASSOCIATIONS ACT, 1960

In 1959, the Department of Co-operation and Co-operative Development decided to undertake a further major review of the Act, and W. Hamilton, the Executive Secretary of C.U.S., sent a circular letter to all co-operative associations and to Federated Co-operatives Limited (F.C.L.) requesting that the co-operatives consider the present legislation and make suggestions for amendments that would facilitate co-operative development.[321] There were a number of replies, including one from the Archerwill Co-operative Association Limited, in which the secretary commented that he believed that it was the first time that the local co-operatives had been invited to comment on the legislation under which they operated.[322] The most prominent concerns

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314 S.S. 1953, c. 31, s. 9

315 Id., s. 11

316 Minutes of meeting held on November 12th, 1953. Saskatchewan Archives, supra, note 102.

317 S.S. 1954, c. 55, ss. 2 & 9

318 S.S. 1956, c. 49

319 S.S. 1957, c. 68

320 S.S. 1959, c. 1

321 May 21st, 1959 letter from Hamilton to Secretaries of co-operatives. Saskatchewan Archives, supra, note 102, C.U.S. Collection - Call No. 110, File 96.

322 June 16th, 1959 letter from Archerwill Co-operative Association Limited to Hamilton, Id.

expressed in the responses were that there should be no limit on the authorized share capital as this caused bureaucratic delays when co-operatives wished to expand their services, that spouses of members should automatically have full membership rights, and as usual, that credit restrictions should be abolished. Mr. T.P. Bell, the Locals Finance and Control Director, made the following comment concerning the credit restrictions.

> Although the thought behind these three sections dealing with sales on credit is most admirable, they appear to be impractical. We say impractical because doing business requires some granting of credit and these sections of the Act have had little effect on those associations that have continued to abuse the practice of extending credit. Some associations have attempted to register a credit by-law, but because of their present accounts receivable position, the registrar has not seen fit to register same. It would appear that we are doing nothing more here than forcing these locals to continue to operate outside the requirements of the Act.[323]

With the support of F.C.L. and C.U.S., restrictions on credit transactions were abolished in the revisions of 1960; finally, a principle that dated back to the Rochdale Pioneers and had caused difficulties for local associations since 1914 was eliminated. After 1960 the local co-operatives were free to enact their own credit restrictions.[324]

One of the most vexing problems facing the Registrar in 1960 was that of spouses' memberships. It will be recalled that the Act had previously provided that, where one spouse had accumulated more than one share from retained patronage dividends, a share could be transferred to the other spouse with the approval of the directors. It was generally believed that both spouses must approve the transfer, though this was not made clear in the Act.

H.L. Fowler, the President of F.C.L., made the following comments on this problem in a letter to W. Hamilton:

> Then there is the age-old question of what might be termed "dual membership." Section 32 could be made to read that both husband and wife are members without the necessity of one having to transfer shares to the other. The Municipal Act has similar provisions, and The Co-operative Act could have it too, but there has always been a resistance.

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323 July 2nd 1959 letter from F.C.L. to Hamilton of C.U.S., id.

324 S.S. 1960 c. 74 s. 67 (a).

> It is not good enough to say that the present Act is workable and that all you have to do is ... The fact is that it has not done, and I have been at two annual meetings this year, Saskatoon and one other where this thing was one "holy schmozzle," and a disgrace to the co-operative movement [325]

After considering the above comment, the Deputy Minister B N Arnason, drafted the following proposed by-law and sent it to L L Lloyd, the President of C U.S.

> an association may by supplemental by-law, provide that the wife of any member in good standing shall have the right to vote at annual or special meetings of the association even though she is not the holder of a share or has not paid a membership fee [326]

Ultimately, this was not considered to be satisfactory and the resulting amendment closely resembled the previous provision The new provision stated that where a married member had acquired more than one share, one share could be transferred to the spouse at the written request of the spouse and with the approval of the board of directors. Also a married couple who owned or purchased two shares could apply for joint membership [327]

In 1960, the phrase "patronage dividend" was changed to "patronage refund" presumably to avoid any suggestion that it was a profit from investment and therefore taxable The term "patronage refund" is a more accurate description. Also the proportion of the surplus required to be set aside in a reserve fund by a consumer co-operative was reduced from ten per cent to five per cent [328] The Act also included a new section listing uses to which the fund could be put [329] Another minor amendment reduced the minimum number of directors for a community service association, production association, housing association or federation to three [330]

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325 June 17th 1959 letter from Fowler to Hamilton, supra, note 322

326 June 11th, 1960 letter from Arnason to Lloyd id

327 S.S 1960 c 74, s. 29

328 Id., s 72

329 Id., s 73

330 Id., ss 79 85 32 and 88

14 CONCLUSIONS

This paper's concentration on the development of co-operative law in Saskatchewan is justified by the Co-operative Movement being and having been in the words of George Keen, "much more highly and extensively developed in Saskatchewan than in any other province."[331]

It was recognized early that the particular conditions of the Canadian west required different approaches to the co-operative principles which were, after all, derived from consumer co-operatives operating in working class urban England. In one letter George Keen wrote

> We are agreed that special conditions of the west militate against the carrying out of Co-operative principles as to the personal attendance of the members at meetings and that we shall be under the necessity of adapting ourselves to conditions as we find them.[332]

An account of the unfolding of co-operative law in Saskatchewan provides a window on the achievements of co-operators who saw the need to ensure that they had more control over their economic destiny than private businesses operating in the province were prepared to allow them.[333] These co-operators achieved a great deal, as is exhibited by the size, strength and importance of co-operatives in Saskatchewan's economic mosaic. Partly as a result of the efforts these co-operators the economy of Saskatchewan is quite different to that of other Canadian provinces.

The development of co-operatives in Saskatchewan has left an important legacy. The law applicable to co-operatives could and can help or hinder their development, or it can constitute a neutral force. The nature of appropriate legislation gives rise to disagreements amongst co-operative activists to this day and can be expected to continue to do so in the future. The law as developed, however, should be seen as a monument to

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331 July 31st 1946 Circular No. 7 id.

332 May 8th 1911 letter from Keen to The Saskatchewan Purchasing Company supra, note 72, Vol. 8 General Correspondence 1911 M-Z. October 22nd 1925 letter from Keen to Waldron id., Vol. 34 General Correspondence, 1925 A-G. November 20th, 1923 letter from Keen to Waldron id., Vol. 30 General Correspondence, 1923, A-K. See also April 11th 1925 letter from Keen to Waldron id., Vol. 34 General Correspondence 1925 A-G. It was also difficult for co-operatives to obtain competent legal advice because lawyers more used to dealing with private traders were not well aware of the application of law to co-operatives. See e.g., May 3rd 1951 letter from Keen to Ketcheson, id., Vol. 26, General Correspondence 1921 A-J.

333 For an account of the history of Québec co-operative law see C. Gregoire, L'Evolution De La Législation Coopérative Québécois (1971) 4 Rev. du Canadian C.J.R.I.E.C. 38.

a desire to achieve another way of organizing economic activity with a concentration on people, democratic values and community purposes which emphasises service rather than profit In the face of the intense opposition from the turn of the century to today this must be seen as an incredible achievement

OCCASIONAL PAPERS

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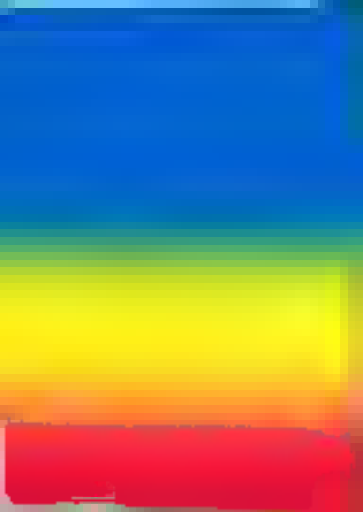
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